(27,092)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 1006.

ALBERT S. BURLESON, POSTMASTER GENERAL, APPELLANT,

vs.

THOMAS E. DEMPCY, WALTER A. SHAW, PATRICK J. LUCEY, JAMES H. WILKERSON, AND FRANK H. FUNK, CONSTITUTING THE PUBLIC UTILITIES COMMISSION OF ILLINOIS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 30, 1919.

1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on the 26th day of April, in the year of our Lord one thousand nine hundred and 19, being one of the days of the regular April Term of said Court, begun Monday, the seventh day of April and of our Independence the 143d year.

President: Honorable Kenesaw M. Landis, District Judge; John J. Bradley, U. S. Marshal; Thomas C. MacMillan, Clerk.

2 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 1209.

ALBERT S. BURLESON, Postmaster General, Plaintiff,

vs.

THOMAS E. DEMPCY, WALTER A. SHAW, PATRICK J. LUCEY, JAMES H. WILKERSON, and FRANK H. FUNK, Constituting the Members of the Public Utilities Commission of Illinois; the Public Utilities Commission of Illinois, EDWARD J. BRUNDAGE, Attorney General of the State of Illinois, Defendants.

Be it remembered that heretofore, to wit: on the 7th day of April, 1919, came the above named complainant, by his solicitors, and filed his bill of complaint, as follows:

3 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Albert S. Burleson, Postmaster General of the United States.
Henry S. Robbins, One of his Solicitors.
Henry S. Robbins, Counsel.

4 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

To the Honorable Judges of said Court:

Albert S. Burleson, Postmaster General of the United States, a citizen of the State of Texas, and having an official residence in the City of Washington, District of Columbia, as a direct and immediately responsible representative of the President of the United States and not by virtue of the power vested in and the duties imposed upon the Postmaster General by virtue of his said office, brings this bill of complaint against Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson, and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, all of said defendants being citizens of the State of Illinois and residents within said state, and further represents as follows:

5 1. On April 2, 1917, the Congress of the United States adopted a joint resolution which was approved by the President of the United States April 6, 1917, declaring that a state of war existed between the United States and the Imperial German Government and "that the President be and he is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States."

2. That the Congress of the United States on July 16, 1918, adopted a joint resolution in the words and figures following:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the President during the continuance of the present war is authorized and empowered whenever he shall deem it necessary for the national security or defense, to supervise or to take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: Provided, that just compensation shall be made for such supervision, possession, control, or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the

same, such person shall be paid seventy-five per centum of the
6 amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code: Provided further, that nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems."

3. That on the 22nd day of July A. D. 1918, the President of the United States under the authority vested in him by the aforesaid joint resolution and under and by virtue of all other powers thereto him enabling issued the following proclamation:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas the Congress of the United States, in the exercise of the constitutional authority vested in them, by joint resolution of the Senate and House of Representatives, bearing date July 16, 1918, resolved:

That the President, during the continuance of the present war, is authorized and empowered, whenever he shall deem it necessary for the national security or defense, to supervise or to take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to operate the same
7 in such manner as may be needful or desirable for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: Provided, that just compensation shall be made for such supervision, possession, control, or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid 75 per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum, as added to said 75 per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section 24, paragraph 20, and section 145 of the Judicial Code: Provided further, that nothing in this act shall be construed to amend, repeal, impair or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications or the issue of stocks and bonds by such system or systems.

And whereas it is deemed necessary for the national security and defense to supervise and to take possession and assume control of all telegraph and telephone systems and to operate the same in such manner as may be needful or desirable;

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolution, and by virtue of all other powers thereto me
8 enabling, do hereby take possession and assume control and supervision of each and every telegraph and telephone system, and every part thereof, within the jurisdiction of the United States, including all equipment thereof and appurtenances thereto whatsoever and all materials and supplies.

It is hereby directed that the supervision, possession, control, and operation of such telegraph and telephone systems hereby by me undertaken shall be exercised by and through the Postmaster General, Albert S. Burleson. Said Postmaster General may perform the duties hereby and hereunder imposed upon him, so long and to such extent and in such manner as he shall determine, through the owners, managers, boards of directors, receivers, officers, and employees of said telegraph and telephone systems.

Until and except so far as said Postmaster General shall from time to time by general or special orders otherwise provide, the owners, managers, boards of directors, receivers, officers and employees of the various telegraph and telephone systems shall continue the operation thereof in the usual and ordinary course of the business of said systems, in the names of their respective companies, associations, organizations, owners, or managers, as the case may be.

Regular dividends hitherto declared, and maturing interest upon bonds, debentures, and other obligations may be paid in due course; and such regular dividends and interest may continue to be paid until and unless the said Postmaster General, shall from time to time, otherwise by general or special orders determine, and,
9 subject to the approval of said Postmaster General, the various telegraph and telephone systems may determine upon and arrange for the renewal and extension of maturing obligations.

By subsequent order of said Postmaster General supervision, possession, control, or operation, may be relinquished in whole or in part to the owners thereof of any telegraph or telephone system or any part thereof supervision, possession, control, or operation of which is hereby assumed or which may be subsequently assumed in whole or in part hereunder.

From and after 12 o'clock midnight on the 31st day of July, 1918, all telegraph and telephone systems included in this order and proclamation shall conclusively be deemed within the possession and control and under the supervision of said Postmaster General without further act or notice.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done by the President, in the District of Columbia, this 22d day of July, in the year of our Lord 1918, and of the independence of the United States the 143d.

[SEAL.] WOODROW WILSON.

By the President:
FRANK L. POLK,
Acting Secretary of State.

4. That when the Congress adopted said resolution of July 16, 1918, it did not, by appropriation from the funds of the United States or otherwise, provide plaintiff with any money or credit with which to operate said telegraph and telephone systems, and has not since done so.

10 5. That pursuant to said proclamation the President did, at twelve o'clock midnight on the 31st day of July, 1918, take possession and assume control and supervision of all the telegraph and telephone systems in the United States, and every part thereof, including all equipment thereof and appurtenances thereto whatsoever, and all material and supplies, and did thenceforth and to the present time has exercised supervision, possession, control and operation of said telegraph and telephone systems by and through plaintiff, the Postmaster General of the United States, and that on the 1st day of August, 1918, the said Postmaster General issued the following order:

"Office of the Postmaster General,

WASHINGTON, August 1, 1918.

Order No. 1783:

Pursuant to the proclamation of the President of the United States, I have assumed possession, control and supervision of the telegraph and telephone systems of the United States. This proclamation has already been published, and the officers, operators and employes of the various telegraph and telephone companies are acquainted with its terms.

Until further notice the telegraph and telephone companies shall continue operation in the ordinary course of business through regular channels. Regular dividends heretofore declared, and maturing interest on bonds, debentures and other obligations may be paid in due course, and the companies may renew or extend their maturing obligations, unless otherwise ordered by the Postmaster General. All officers, operators and employees of the telegraph and telephone companies will continue in the performance of their present duties, reporting to the same officers as heretofore, and on

11 the same terms of employment. Should any officer, operator or employee desire to leave the service, he should give notice as heretofore to the proper officer, so that there may be no interruption or impairment of the service to the public.

I earnestly request the loyal co-operation of all officers, operators and employees and the public, in order that the service rendered shall not only be maintained at a high standard, but improved wherever possible. It is the purpose to co-ordinate and unify these services so that they may be operated as a national system with due regard to the interest of the public and the owners of the properties.

No changes will be made until after the most careful consideration of all the facts. When deemed advisable to make changes, due announcement will be made.

A. S. BURLESON,
Postmaster General."

6. That plaintiff has since said date continued the operation of said various telegraph and telephone systems by using the names of the respective companies, associations and organizations theretofore operating said systems respectively, and by retaining and using as his employees most of the officers and employees previously used by said companies in the operation of their respective systems.

7. That subsequently, in order to facilitate his operation of said telegraph and telephone systems, plaintiff created a Board to take charge of the telegraph and telephone service of the country, by the following orders:

"Telegraph and telephone service, Washington, Dec. 13, 1918.
Order No. 2479.

Union N. Bethell, F. A. Stevenson, G. N. Yorke and A. F.
12 Adams are hereby appointed an operating board for the operation of the telegraph and telephone service under government operation and control, of which board Mr. Bethell will be chairman.

A. S. BURLESON,
Postmaster General."

"Telegraph and Telephone service, Washington, December 23, 1918.
Order No. 2534.

The operating board appointed under Order No. 2479, dated Dec. 13, 1918, consisting of Union N. Bethell, F. A. Stevenson, G. N. Yorke and A. F. Adams, of which Union N. Bethell is chairman, is hereby directed to assume the operation of the telephone and telegraph systems under governmental control.

A. S. BURLESON,
Postmaster General."

8. That on the 29th day of March, 1919, plaintiff found it necessary to and did increase, throughout the United States, the rates to be charged for telegrams and for the use of commercial and governm[illegible]t leased wires, and that on said date, to render such increases in rates effective, plaintiff issued generally to his employees throughout the United States, the following order:

"Order Number Twenty-nine-forty.

The following schedule of domestic commercial telegraph rates shall be effective from April first, nineteen-nineteen, and continue until otherwise ordered.

Rates:
Present twenty-five dash two; new thirty dash two point five.
Present thirty dash two; new thirty-six dash two point five;
Present thirty-five dash two; new forty-two dash two point five;
Present forty dash three; new forty-eight dash three point five;
13 Present fifty dash three; new sixty dash three point five;
Present sixty dash four; new seventy-two dash five;

Present seventy-five dash five; New ninety dash six;

Present one hundred dash seven; new one hundred twenty dash eight point five;

Day letters and night letters shall be computed as at present but charged for on the basis of the above rates, night messages will be charged for at an increase of twenty per centum over existing night message rates.

Commercial and government leased wires shall be charged for at an advance of twenty per centum over existing leased wire rates whether such wires be furnished by a telegraph or a telephone system under government control. The telegraph rates for domestic United States Government telegrams are increased twenty per cent. over the present government rate.

The rate increases herein ordered are made necessary to meet the increased cost of operation occasioned by wage increases now in effect made during the past year and are barely sufficient for the purpose.

(Signed) A. S. BURLESON,
Postmaster General."

and that the foregoing rates are now being charged and collected by plaintiff.

9. That by an act of the Illinois legislature approved June 30, 1913, there was created a State Public Utilities Commission consisting of five members and the five defendants hereinbefore named are the present members of said Commission; that said Commission is by said statute given general supervision of all public utilities, the term "Public Utility" when used in said statute being by it declared to mean and include every corporation, company, association,
14 joint stock company or association, firm, partnership or individual their lessees, trustees or receivers appointed by any court whatsoever (except, however, such public utilities as are or may hereafter be owned or operated by any municipality) that now or hereafter may own, control, operate or manage within the state directly or indirectly for public use any plant, equipment or property used or to be used for or in connection with the transportation of persons or property or the transmission of telegraph or telephone messages between points within this State; or for the production, storage, transmission, sale, delivery or furnishing of heat, cold, light, power, electricity or water; or for the conveyance of oil or gas by pipe line; or for the storage or warehousing of goods; or for the conduct of the business of a wharfinger; or that may own or control any franchise, license, permit or right to engage in any such business; and said statute also provides that no public utility shall increase any rate or other charge under any circumstances whatsoever except upon showing before the Commission and finding by the Commission that such increase is justified. By said statute said Commission is also authorized and directed, whenever any such public utility shall make a change of rates without said approval of said Commission, to commence an action for the purpose of having such violations or threatened violations stopped or prevented either by mandamus or injunction, and said statute also

provides for fines and imprisonment to be imposed upon any person, acting as agent or employe who violates the provisions of said act.

10. That the plaintiff is informed and believes that on or about the 4th day of April, 1919, said Utilities Commission instructed the Attorney General of Illinois to begin legal proceedings in one of the Illinois courts under said statute against this plaintiff or his employees in Illinois to enjoin and prevent him from continuing in force as to all intrastate service within the State of Illinois said increased rates for telegraph and leased wire service pursuant to plaintiff's order of March 29, 1918, without complying with the provisions of said statute.

11. That said Commission and said Attorney General of Illinois claim that under said State statute and in the exercise of the police power of the State of Illinois delegated to said Commission by said statute, said Commission has the power to regulate the rates to be fixed, charged and collected by plaintiff as to all telegraph and telephone service rendered by plaintiff between points wholly within the State of Illinois—that is as to all such intrastate telegraph and telephone service—and said Commission and Attorney General also claim that under the constitution of the United States it was beyond the power of Congress by said resolution of July 16, 1918, to deprive the said Commission of the right to fix and regulate the charges to be made by plaintiff for such intrastate service, and that said resolution of July 16, 1918, if construed to confer on plaintiff the right to thus prescribe and fix the charges and rates for such intrastate telegraph and telephone service rendered by plaintiff in the State of Illinois, violates the constitution of the United States.

12. That plaintiff contends that said resolution of July 16, 1918, confers on him the right to fix the rates and charges for such intrastate telegraph and telephone service within the State of Illinois (and other states) and that, if said Illinois statute creating said Utilities Commission be construed, as claimed by said Commission and said Attorney General, to require plaintiff to comply with said State statute and prescribe only such rates for such intrastate service as said Utilities Commission shall approve, said State statute violates those provisions of the constitution of the United States which confer on Congress and the President of the United States exclusive powers to declare and conduct war, and make all necessary and proper laws for carrying into execution said powers.

13. That the amount involved and the matters in dispute, exclusive of interest and costs, is much more than three thousand dollars.

14. That plaintiff has no adequate remedy at law, nor any other remedy except by injunction issuing out of a court of equity as hereinafter prayed; that if plaintiff shall be prevented from making the charges for telegraphic service prescribed by his said order of March 29, 1919, or be compelled by injunction or otherwise to accept from all persons seeking such service in Illinois, lower rates than those prescribed in said order, plaintiff would permanently lose the difference between such lower rates and such prescribed rates, as it would

not be feasible to bring suits to recover the difference between the prescribed rates and the said lower rates from each person availing himself of such service, as the cost of each of said suits would be in excess of the amount to be recovered, and, furthermore, that
17 this would result in a multiplicity of suits, and that if the penalties prescribed by said statute for the violation thereof were imposed upon the employees of plaintiff within the State of Illinois, it would result in a demoralization of said employees and the impairment of the service rendered by plaintiff to residents of Illinois.

Wherefore plaintiff prays this honorable court:

1. That Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, who are made defendants hereto, may be required to full and true answer make to this bill, but not under oath (answer under oath being hereby expressly waived), and

2. That a temporary injunction issue herein, and upon a final hearing herein be made permanent, enjoining Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, and each of them, and each of their agents, deputies and employees from interfering, directly or indirectly, by suit or other prosecution, civil or criminal, or in any other manner whatsoever, with plaintiff or any of his agents or employees in charging and collecting for telegraphic service and leased wire service the rates prescribed by plain-
18 tiff's said order of March 29, 1919, or any other charges that may be hereafter prescribed by plaintiff for such service, and that plaintiff may have such other and further relief as may be just and equitable and to the court shall seem meet.

May it please your Honors to grant unto plaintiff a preliminary and permanent injunction as above praved and also a writ of subpœna of the United States directed to Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, commanding them and each of them on a certain day to appear to answer this bill and to abide by and perform such decree as may be entered by this court.

ALBERT S. BURLESON,
Postmaster General of the United States,
By HENRY S. ROBBINS,
One of His Solicitors.

HENRY S. ROBBINS,
Counsel.

STATE OF ILLINOIS,
County of Cook, ss:

Henry S. Robbins, being duly sworn, deposes and says that he is one of the solicitors for the plaintiff in the foregoing bill, and has been authorized by the plaintiff to make this affidavit, and that affiant knows the contents thereof, and that the allegations
19 therein stated are true of his own knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters he believes the same to be true.

HENRY S. ROBBINS.

Subscribed and sworn to before me, this 7th day of April, 1919.

A. S. PAPENGUTH,
[NOTARIAL SEAL.] *Notary Public.*

[Endorsed:] Filed April 7, 1919. T. C. MacMillan, Clerk.

20 And, to-wit: the 7th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

21 In the District Court of the United States, for the Northern District of Illinois, Northern Division.

In Equity.

ALBERT S. BURLESON, Postmaster General

vs.

THOMAS E. DEMPCY et al.

Order.

Upon filing the bill of complaint herein, and upon motion of plaintiff,

It is ordered that the defendants show cause before this court at 10:30 o'clock A. M., on the 14 day of April, 1919, why a temporary injunction should not issue, as prayed by said bill.

And it is further ordered that until the hearing of said motion, the defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, and each of them refrain from interfering, directly or indirectly, by suit or other prosecution, civil or criminal, or in any other manner whatsoever, with plaintiff or any of his agents or employees in charging and collecting for telegraphic

service and leased wire service the rates prescribed by plain-
22 tiff's order of March 29, 1919, or any other charges that may be hereafter prescribed by plaintiff for such service.

KENESAW M. LANDIS, *D. J.*

23 And on to wit: the 7th day of April, 1919, a certain Chancery Subpœna issued out of the Clerk's office of said Court, directed to the Marshal to execute, said Subpœna, together with the Marshal's return thereon endorsed are in words and figures following, to wit:

24 UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

The President of the United States of America.

To Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, Greeting:

We command you and every of you, that you be and appear before our Judges of our District Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, on or before the twentieth day after service of this writ, exclusive of the day of service, to answer or otherwise defend against a certain bill in equity this day filed by Albert S. Burleson, Postmaster General, in the Clerk's office of said Court, in the City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Southern District of Illinois to Execute.

Witness the Hon. Kenesaw M. Landis, Judge of the District Court of the United States of America, for the Northern District of Illinois, at Chicago aforesaid, this 7th day of April in the year of our Lord One Thousand Nine Hundred and 19 and of our Independence the 143rd year.

[SEAL.] T. C. MACMILLAN,
Clerk.

Memorandum.

The defendants are required to file their answer or other defense in the Clerk's office on or before the twentieth day after service hereof upon them, excluding the day of service; otherwise the said bill may be taken pro confesso.

T. C. MACMILLAN,
Clerk.

25 [Endorsed:] No. 1209. Marshal's No. —. District Court of the United States, Northern District of Illinois. Albert S. Burleson, Postmaster General, vs. Thomas E. Dempcy, et al. Chancery Subpœna. Duplicate. Robbins, Townley & Wild, Complainant's Solicitors.

26 *Marshal's Return.*

UNITED STATES OF AMERICA,
Southern District of Illinois, Southern Division, ss:

I have duly executed the within writ by reading the same and delivering a true copy thereof to the within named Edward J. Brundage, Attorney, General of the State of Illinois, at Springfield, Sangamon County, Illinois, this 8th day of April, A. D. 1919.

V. Y. DALLMAN,
United States Marshal.

(Endorsed:) Filed April 9, 1919. T. C. MacMillan, Clerk.

27 And on to wit: the 9th day of April, 1919, come- the U. S. Marshal and files in the Clerk's office of said Court a certain certified copy of the order of said Court together with the return of the U. S. Marshal, Southern District of Illinois, which is in words and figures following, to wit:

28 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

MONDAY, April 7, 1919.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Order.

Upon filing the bill of complaint herein, and upon motion of plaintiff,

It is ordered that the defendants show cause before this court at 10:30 o'clock A. M., on the 14 day of April, 1919, why a temporary injunction should not issue, as prayed by said bill.

And it further ordered, That until the hearing of said motion, the defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, and each of them refrain from interfering, directly or indirectly, by suit or other prosecution, civil or criminal, or in any other manner whatsoever, with plaintiff or any of his agents or employees in charging and collecting for telegraphic service and leased wire service the rates prescribed by plaintiff's

order of March 29, 1919, or any other charges that may be hereafter prescribed by plaintiff for such service.

KENESAW M. LANDIS, *D. J.*

29 In the District Court of the United States of America for the Northern District of Illinois, Eastern Division.

I, T. C. MacMillan, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order made and entered in said Court on the 7th day of April A. D. 1919, as fully as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 7th day of April A. D. 1919.

T. C. MACMILLAN,
[SEAL.] *Clerk.*

30 *Marshal's Return.*

UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division, ss:

I have duly executed the within writ by reading the same and delivering a true copy thereof to Frank O. Lowden, Governor of the State of Illinois, and to Edward J. Brundage, Attorney General of the State of Illinois, at Springfield, Sangamon County, Illinois, this 8th day of April, A. D. 1919.

Marshal's fees $4.12.

V. Y. DALLMAN,
United States Marshal.

(Endorsed:) Filed Apr. 9, 1919, T. C. MacMillan, Clerk.

31 And on to-wit: the 11th day of April, 1919, there was filed in the Clerk's office of said Court a certain Notice and Motion in words and figures following, to-wit:

32 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Notice.

To George T. Buckingham, Esq., Solicitor for Defendant:

Please take notice That on Friday, April 11, 1919, at 10:30 o'clock A. M., I shall call up, before the Honorable Judge Landis, in the

room usually occupied by him as a court room, the motion that two additional judges be called in to hear and determine the application of the motion for a temporary injunction in the above entitled cause, pursuant to Section 266 of the Judicial Code.

HENRY S. ROBBINS,
Solicitor for Plaintiff.

Received copies of the foregoing notice and motion, this 10th day of April, 1919.

GEO. T. BUCKINGHAM,
Solicitor for Defendants.

33 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Motion.

And now comes the Plaintiff and moves the Court to call to his assistance in the hearing and determining the application of the motion for a temporary injunction herein, two other judges, one of whom to be a Circuit Judge, pursuant to Section 266 of the Judicial Code.

HENRY S. ROBBINS,
Solicitor for Plaintiff.

(Endorsed:) Filed April 11, 1919, T. C. MacMillan, Clerk.

34 And on to-wit: the 11th day of April, 1919, there was filed in the Clerk's office of said Court a certain Motion in words and figures following, to-wit:

35 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Motion.

And now comes the Plaintiff and moves the Court to call to his assistance in the hearing and determining the application of the

motion for a temporary injunction herein, two other judges, one of whom to be a Circuit Judge, pursuant to Section 266 of the Judicial Code.

HENRY S. ROBBINS,
Solicitor for Plaintiff.

(Endorsed:) Filed April 11, 1919, T. C. MacMillan, Clerk.

36 And afterwards, to-wit: on the 14th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to-wit:

37 In the District Court of the United States, Northern District of Illinois, Eastern Division.

MONDAY, April 14, 1919.

Present: Honorable Kenesaw M. Landis, District Judge.

Equity. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Upon motion of the defendants by their solicitors, it is ordered by the Court that the Western Union Telegraph Company and Postal Telegraph-Cable Company be and the same are hereby made parties defendant in the above-entitled cause, and

It is further ordered that process issue against said Western Union Telegraph Company and Postal Telegraph-Cable Company requiring them to answer the cross-bill as required by the Equity Rules.

38 And afterwards, to-wit: on the 14th day of April, 1919, being one of the days of the regular April term of said Court in the record of proceedings thereof, in said entitled cause, before the Honorable Francis E. Baker, Circuit Judge, Honorable George T. Page, Circuit Judge, Honorable Kenesaw M. Landis, District Judge, appears the following entry, to-wit:

39 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Order.

Before Circuit Judge Baker, Circuit Judge Page, and District Judge Landis.

On motion of plaintiff,

It is ordered that plaintiff have leave to file instanter amendments to paragraph 11 and paragraph 12 of the Bill herein.

40 And on to-wit: the 14th day of April, 1919, come- the complainant herein by his attorneys and files in the Clerk's office of said Court his certain Amendment to Bill in words and figures following, towit:

41 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Now comes the plaintiff, and pursuant to the order of court permitting it, files the following amendments to his Bill herein:

Amend paragraphs 11 and 12 of said Bill so that the same will read as follows:

"11. That said Commission and said Attorney General of Illinois claim that under said State statute and in the exercise of the police power of the State of Illinois delegated to said Commission by said statute, said Commission has the power to regulate the rates to be fixed, charged and collected by plaintiff as to all telegraph and telephone service rendered by plaintiff between points wholly within the State of Illinois,—that is as to all such intrastate telegraph and telephone service—and said Commission and Attorney General also claim that under the constitution of the United States it was beyond the power of Congress by said resolution of July 16, 1918, to deprive the said Commission of the right to fix and regulate the charges to

be made by plaintiff for such intrastate service, and that said resolution of July 16, 1918, if construed to confer on plaintiff the right to thus prescribe and fix the charges and rates for such intrastate telegraph and telephone service rendered by plaintiff in the State of Illinois, violates the constitution of the United States; and said Commission and said Attorney General also claim that said Illinois statute of June 30, 1913 confers upon said Utilities Commission, through the Attorney General of the State of Illinois, the right to sue by mandamus or for an injunction, plaintiff and his
42 agents, who are co-operating with him in operating said telegraph system within that State, in the courts of the State of Illinois, and thereby prevent plaintiff and his said agents from charging the schedule of rates for telegraph service promulgated by plaintiff on the 29th of March, 1919, or any other rate, before the same shall have been submitted to said Utilities Commission and been approved by it; and to compel plaintiff to charge the rates fixed by said Commission."

"12. That plaintiff contends that said resolution of July 16, 1918, confers on him the right to fix the rates and charges for such intrastate telegraph and telephone service within the State of Illinois (and other states) and that, if said Illinois statute creating said Utilities Commission be construed, as claimed by said Commission and said Attorney General, to require plaintiff to comply with said State statute and prescribe only such rates for such intrastate service as said Utilities Commission shall approve, and to confer on said Utilities Commission the right to sue by mandamus or on injunction plaintiff or his said agents in any court, State or Federal, said State statute violates those provisions of the constitution of the United States which confer on Congress and the President of the United States exclusive powers to declare and conduct war, and make all necessary and proper laws for carrying into execution said powers, and which also confer upon the United States the right not to be sued in any court without its consent."

ALBERT S. BURLESON,
Postmaster General of the United States.
By HENRY S. ROBBINS,
One of His Solicitors.

STATE OF ILLINOIS,
County of Cook, ss:

Henry S. Robbins, being first duly sworn, on oath deposes and says that he is one of the solicitors for the plaintiff in the above entitled cause and is authorized by the plaintiff to make this
43 affidavit, and that affiant knows the contents of the foregoing amendments to paragraphs 11 and 12 of said Bill, and that the allegations of said amended paragraph 12 are true of his own knowledge and that the allegations of said paragraph 11 this affiant believes to be true.

HENRY S. ROBBINS.

Subscribed and sworn to before me this 14th day of April, 1919.
A. S. PAPENGUTH,
[SEAL.] *Notary Public.*

[Endorsed:] Filed Apr. 14, 1919. T. C. MacMillan, Clerk.

44 And on to-wit: the 14th day of April, 1919, come the defendants herein by their attorneys and filed in the Clerk's office of said Court their certain Answer in words and figures following, to-wit:

45 In the District Court of the United States, for the Northern District of Illinois, Northern Division.

In Equity.

ALBERT S. BURLESON, Postmaster General, Plaintiff,
vs.
THOMAS E. DEMPCY et al., Defendants.

The Answer of the Defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, Constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois and Edward J. Brundage, Attorney General of the State of Illinois, to the Bill of Complaint of Albert S. Burleson, Postmaster General, Complainant.

Edward J. Brundage, Attorney General, Attorney for Defendants.
George T. Buckingham, Matthew Mills, Raymond S. Pruitt, Assistant Attorneys General, Of Counsel.

46 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity.

ALBERT S. BURLESON, Postmaster General, Plaintiff,
vs.
THOMAS E. DEMPCY et al., Defendants.

The Answer of the Defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, Constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois and Edward J. Brundage, Attorney General of the State of Illinois, to the Bill of Complaint of Albert S. Burleson, Postmaster General, Complainant.

These defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the

members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois and Edward J. Brundage, Attorney General of the State of Illinois, now, and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can, or may be had or taken to the many errors, uncertainties and other imperfections in said bill contained, for answer thereunto, or to so much and such parts as these defendants are advised it is, material or necessary for them to make answer unto, answering, say:

47 1. These defendants admit that the complainant, Albert S. Burleson, is a citizen of the State of Texas and is the Postmaster General of the United States, having an official residence in the City of Washington, in the District of Columbia, and that the defendants are the duly constituted officials of the State of Illinois as named in said bill of complaint, and are citizens of the State of Illinois and residents within said state.

2. Defendants admit that on April 2, 1917, the Congress of the United States adopted a joint resolution which was thereafter approved by the President of the United States, declaring the existence of a state of war between the United States and the Imperial German Government, and authorizing and directing the President to employ the entire military and naval force of the United States and the resources of the Government to carry on said war against the Imperial German Government, and to bring the conflict to a successful termination.

3. Defendants admit that on July 16, 1918, the Congress adopted the joint resolution, in words and figures as set out in paragraph 2 of complainant's bill of complaint, authorizing and directing the President of the United States, during the continuance of said war with Germany, whenever he should deem it necessary for the national security or defense, to supervise or take possession and assume control of any telegraph, telephone, marine cable or radio system or systems, or any part thereof, and to operate the same for the duration of the war, said operation and supervision, however, to be subject to existing laws and powers of the states in relation to

48 taxation and to the lawful police regulations of the several states, except wherein such laws, powers and regulations effect the transmission of Government communications or the issue of stocks and bonds by such system or systems.

4. Defendants admit that on July 22, 1918, the President of the United States, purporting to act under the authority of said congressional resolution of July 16, 1918, issued a certain proclamation as set out in full in paragraph 3 of complainant's bill of complaint, wherein and whereby the said President of the United States undertook to take possession and assume control and supervision of each and every telegraph and telephone system, and every part thereof, within the jurisdiction of the United States, and to supervise and operate the same through the Postmaster General of the United States, in accordance with the purported power conferred upon, and vested in the President of the United States by said Congressional resolution.

5. Defendants admit that when the Congress adopted said resolution of July 16, 1918, it did not, by appropriation from the funds of the United States, provide the Postmaster General with any money or credit with which to operate said telegraph and telephone systems, and has not since provided such money or credit, except as the same has been collected from the users of telegraph and telephone service and the patrons and customers of the telegraph and telephone systems so seized and operated by the Postmaster General.

6. Defendants admit that pursuant to said proclamation, the President of the United States did, at 12 o'clock midnight, on
49 July 31, 1918, take possession and assume control and supervision of all the telegraph and telephone systems in the United States, and that said control and supervision has been, from such date to the present time, exercised and is being exercised through the Postmaster General of the United States, and that on the 1st day of August, 1918, the complainant, as said Postmaster General, issued the order set out in full in paragraph 5 of complainant's bill of complaint.

7. Defendants admit that since said date, the various telegraph and telephone systems have been operated under the directions of the Postmaster General under the names of the respective companies, associations and organizations theretofore operating said systems respectively, and that most of the officers, employees and agents previously used by said companies in the operation of their respective systems, have been continued in their former employment, and that said telegraph and telephone systems have continued to be operated under their direction and control.

8. Defendants further admit that on or about December 13, 1918, the Postmaster General appointed an operating board, composed of certain individuals as named in paragraph 7 of complainant's bill of complaint, which board was vested with certain authority in connection with the operation of the telegraph and telephone service of said companies while under Government control, not including, however, any power or authority to increase or modify the then existing rates charged and collected by said telephone and telegraph companies for wholly intrastate service.

50 9. Defendants admit that on or about the 29th day of March, 1919, the complainant, as said Postmaster General, undertook to issue a certain order No. 2940, prescribing certain increased schedules, applicable to the rates to be charged for the transmission of telegrams and for the use of commercial and government leased wires between all points in the United States, including intrastate service between points lying wholly within the State of Illinois, and that said increases amounted to an average of twenty (20) per cent over and above the rates theretofore charged for such service, but answering defendants deny that such increase was necessary either for the purpose of raising additional revenue or for any other legitimate governmental purpose whatsoever, and on the contrary, charge that such increases were unnecessary, illegal and void, and constituted an act upon the part of the Postmaster General which was wholly ultra vires and beyond the powers vested in, and con-

ferred upon him by said Congressional Act of July 16, 1918, and said Presidential Proclamation of July 22, 1918.

10. Defendants admit that by an Act of the Illinois Legislature, approved June 30, 1913, and in force January 1, 1914 there was created a State Public Utilities Commission (now the Public Utilities Commission of Illinois), consisting of five members, and that the five defendants first named in complainant's bill of complaint are the present members constituting the said Public Utilities Commission of Illinois; that by said act, the said Commission is given general supervision and control over all public utilities which own, operate, manage or control within the State of Illinois, for
51 public use, any plant, equipment or property used, or to be used for, or in connection with the transmission of telegraph and telephone messages between points within said state; that, among other powers conferred upon said Commission, it is authorized to fix and prescribe reasonable rates to be charged and collected by telegraph and telephone companies for intrastate service between points lying wholly within the State of Illinois, and that said statute provides that no public utility shall increase any rates or other charges, under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified, and that said statute specifically confers upon the Commission power and authority, whenever any such public utility shall seek to advance its rates without such approval of said Commission, to commence an action for the purpose of enjoining such threatened violations of law or of the orders of the Commission, and that said statute also provides for fines and imprisonments to be imposed upon any person or persons who violate the provisions of said act.

11. Defendants deny that on the 4th day of April, 1919, the said Public Utilities Commission instructed the Attorney General of Illinois to begin legal proceedings in one of the Illinois courts, under said statute, against the Postmaster General or his employes, in Illinois, to enjoin and prevent him or them from continuing in force, as to all intrastate service within the State of Illinois, said increased rates for telegraph and leased wire service instituted pursuant to the said Postmaster General's order of March 29,
52 1918, but defendants admit that on or about said date, the said Public Utilities Commission adopted a certain resolution, directing the Attorney General to take such steps as he might deem necessary and appropriate to prevent the said increase in rates for telegraphic service within the State of Illinois, a true copy of which resolution is hereto attached and made a part hereof, and identified as "Exhibit A."

12. Defendants further answering, admit that the said Public Utilities Commission of Illinois and the Attorney General of Illinois claim that, under the provisions of said Public Utilities Commission Law and in the exercise of the police power of the State of Illinois, delegated to said Commission by said statute, the said Commission has, and retains full power and authority to regulate the rates to be

fixed, charged, collected and received by the telegraph and telephone companies and systems furnishing service to the public between points lying wholly within the State of Illinois while said systems are being operated by the Postmaster General, but these defendants deny that the said Public Utilities Commission and the Attorney General of Illinois have ever claimed, or do now claim that under the Constitution of the United States it was beyond the power of the Congress of the United States, under its constitutional powers to make war, to deprive the said Public Utilities Commission of the right to fix and regulate the charges to be made for such intrastate service, and deny that said resolution of July 16, 1918, if construed to confer on the plaintiff the right to thus prescribe and fix the charges and rates for said intrastate telegraph service fur-
53 nished to the public between points lying wholly within the State of Illinois, violates the Constitution of the United States, but on the contrary, defendants admit that the Congress of the United States, under its constitutional powers to make war, might have seized and operated all the telegraph and telephone systems of the country through the President of the United States or any other official, and have conferred upon such official the power to operate said systems and properties in such manner as might have been necessary, and to do all other things which might seem needful in and about the carrying on of the war with the Germanic powers and the bringing of said war to a successful conclusion.

13. Defendants deny, however, that the said resolution of July 16, 1918, confers upon the President of the United States or the Postmaster General any power or right to fix the rates and charges for intrastate telegraph and telephone service furnished and rendered between points lying wholly within the State of Illinois, and on the contrary, charge that said Act of July 16, 1918, specifically reserves to the states their lawful police regulations, including the power to prescribe reasonable rates for such intrastate telegraph and telephone service, and in effect, directs the President of the United States to operate such telegraph and telephone systems in compliance with existing state laws, and defendants deny that said Illinois statute, in so far as it requires public utilities, operating and owning telegraph and telephone systems within the State of Illinois, to comply with said state statute, whether operated by the corporate owners of the property or under the direction of the Post-
54 master General of the United States, violates any provisions of the Constitution of the United States which confer on Congress and the President of the United States exclusive power to declare and conduct war, and to make all necessary and proper laws for carrying into execution said power.

14. Defendants admit that the amount involved in the matters in dispute, exclusive of interest and costs, is more than Three Thousand Dollars.

15. Defendants, further answering and praying that they may have the same advantage as if a cross-bill or counter-claim were filed

by them, set out and charge that on or about the 1st day of July, 1918, the Postmaster General of the United States, pursuant to the powers conferred upon him by said Congressional resolution of July 16, 1918, and said Presidential Proclimation of July 22, 1918, assumed possession and control of all the properties within the State of Illinois, belonging to the Western Union Telegraph Company, a corporation, organized and existing under the laws of the State of New York, and a citizen and a resident of the State of New York, and the Postal Telegraph-Cable Company, a corporation, organized and existing under the laws of the State of New York, and a citizen and resident of the State of New York, which, answering, defendants pray may be made parties to this suit and defendants to their answer in so far as said answer sets out a counter-claim and prays for affirmative relief; that said Western Union Telegraph Company and said Postal Telegraph-Cable Company, and each of them, own and operate, within the State of Illinois, certain wires, instruments and other property which
55 is now, and has been, for many years last past, used in connection with the transmission of messages, either over its own or connecting lines between points lying wholly within the State of Illinois, and has been, and is now engaged in intrastate telegraph service between points wholly within the State of Illinois; that each of said corporations is a public utility, subject to the regulation and control vested in the Public Utilities Commission of Illinois under the provisions of an Act entitled "An Act to provide for the Regulation of Public Utilities," approved June 30, 1913, and in force January 1, 1914, and acts amendatory thereto, which act will be hereafter designated the "Illinois Public Utilities Commission Law"; that each of said corporations, at all times prior to the said 31st day of July, 1918, conducted its said telegraph business through its own agents and employes, and under the direction of its duly designated corporate officials, and for its own account exclusively, in accordance with the existing laws of the United States, and the State of Illinois, and subject to the limitations, restrictions and regulations imposed upon such public utility corporations by the Illinois Public Utilities Commission Law and by the various orders of the said Public Utilities Commission of Illinois; that prior to the said 31st day of July, 1918, each of said corporations had filed with the Public Utilities Commission of Illinois certain schedules of rates applicable to the transmission of messages by telegraph between points lying wholly within the State of Illinois, which rates were reasonable and just, and were accepted and approved by said Public Utilities Commission of Illinois.

56 16. Defendants further charge that at all times subsequent to the said 31st day of July, 1918, and up to the 29th day of March, 1919, the said defendant corporations continued to operate their lines and public utility property, and to furnish intrastate telegraph service to the public between points lying wholly within the State of Illinois while said lines were under the direction and control of the Postmaster General, at the same rates heretofore

charged and collected by them for such service, and accepted and approved by said Public Utilities Commission of Illinois; that said rates so prescribed by the Public Utilities Commission of Illinois and heretofore in force within the state, are lawful and reasonable intrastate rates, and are a lawful police regulation of the State of Illinois, and have remained, and are now in full force and effect under the express proviso contained in said Act of Congress of July 16, 1918; and that said Albert S. Burleson, Postmaster General, is wholly without power and authority to repeal or change or amend said intrastate rates and charges heretofore in force within the State of Illinois, and to establish new and increased rates applicable to the transmission of messages by telegraph between points lying wholly within the State of Illinois, except in so far as the establishment of such new and different rates may affect the transmission of Government communications for war purposes or the issue of stocks or bonds by said companies.

17. That it is provided by Section 32 of said Public Utilities Commission Law that all rates or other charges made, demanded or received by any public utility, for any service rendered or to
57 be rendered, shall be just and reasonable; that Section 33 of said Act provides that every public utility shall file with said Public Utilities Commission, and keep open for public inspection, schedules showing all rates and other charges and classifications which are in force at the time, for any service performed by it; that Section 35 of said Act provides that no public utility shall undertake to perform any service or to furnish any product or commodity unless or until the rates and other charges and classifications applicable to such service, product or commodity, shall have been filed and published in accordance with the provisions of said act; that Section 36 of said act provides that unless the Commission otherwise orders, no change shall be made by any public utility in any rate or other charge or classification, except after thirty days' notice to the Commission, and to the public, such notice to be given by filing with the Commission and keeping open for public inspection, new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when such change or changes go into effect; and that no public utility shall increase any rate or other change under any circumstances whatsoever, except upon a showing before the Commission, and a finding by the Commission that such increase is justified; that Section 37 of said Act further provides that except in certain cases of emergency where a service is performed not specifically covered by schedules filed, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates or other charges applicable to such
58 service as specified in its schedules on file and in effect at the time such service is rendered.

18. That on or about the 27th day of March, 1919, the said Postmaster General announced, through advertisements in the Chicago newspapers, that on or about the 29th day of March, 1919, the rates

applicable to the transmission of messengers by telegraph over all lines operated and controlled by the Postmaster General, including the transmission of messages by telegraph between points within the State of Illinois, would be increased, as stated in complainant's bill of complaint; that neither the complainant nor the corporation defendants submitted to the Public Utilities Commission of Illinois any application for permission or authority to withdraw or discontinue the schedules theretofore in force in the State of Illinois and applicable to the transmission of messages by telegraph between points wholly within the State of Illinois, nor have said corporation defendants nor said Postmaster General made application to said Public Utilities Commission for authority to put into full force and effect the said new tariffs and charges so promulgated by the Postmaster General, but on the contrary, the said increased rates and charges have been put into force and effect by said corporation defendants, under the direction of said Postmaster General, without any authority or order from the Public Utilities Commission of Illinois, without giving to the Commission, as provided by law, thirty days' notice of the date when such changes were to become effective, without giving to the authorities of the State of Illinois, charged with the enforcement of the laws, any opportunity to secure
59 relief against such threatened violations of law by injunction or mandamus proceedings filed in compliance with Section 75 of the Public Utilities Commission Law, and answering defendants charge that the corporation defendants, under the direction of said Postmaster General, will continue to charge, collect, demand and receive such increased and unauthorized rates and charges for telegraph service between points lying wholly within the State of Illinois, unless they are severally restrained and enjoined by the order of this honorable court.

19. Defendants ask that, by this answer, they may be granted the same relief against the complainant and the said corporations who are made defendants to this answer, as might have been obtained through a suit filed by the Attorney General of Illinois under the provisions of Section 75 of said Public Utilities Commission Law, and brought pursuant to the order of said Public Utilities Commission, a copy of which is hereto attached and identified as "Exhibit A" for the purpose of enjoining and restraining the said threatened violations of law by the said complainant and the said corporations.

20. Defendants charge that the said rates which the Postmaster General has so instituted and promulgated, and which the said corporation defendants are collecting and receiving, applicable to the transmission of messages by telegraph between points lying wholly within the State of Illinois, are greatly in excess of the rates heretofore established and in force for such service, and will increase the cost of such service to the citizens of Illinois using the facil-
60 ities of said companies, approximately twenty (20) per cent; that such increased tariffs and charges have materially increased, to the millions of citizens of the state who use the facilities offered by said companies to the public, the cost of transmitting messages by telegraph between points lying wholly within the State of

Illinois, and are imposing, and will continue to impose an increased and unjustified burden upon the customers and patrons of said corporations and upon the public, generally, in the State of Illinois; that said increased schedules and rates have not been, by said Public Utilities Commission of Illinois, found to be reasonable and just; that said Commission has made no finding that any increase whatsoever in the rate charged for such service is justified at the present time; that said increased rates are not based upon a survey or valuation of the property of the corporation defendants, or any of them, devoted to the public use, or upon the cost of furnishing the service which they provide, covering the transmission of telegraph messages between points lying wholly in the State of Illinois, but that said increased rates and charges are, on the contrary, wholly arbitrary, unauthorized and unjustified, and do not, and will not tend, in any way or manner, to affect the transmission of Government messages or the issue of stocks and bonds by such telegraph system or systems, or to assist the United States Government in the prosecution of the war with the Germanic powers now terminated by the armistice of November 11, 1918, but are wholly subject to the lawful and existing police regulations of the State of Illinois.

61 21. Defendants further charge that many thousands of intrastate messages are transmitted each day by telegraph between points lying wholly within the State of Illinois; that it would be impossible to bring before this court, or any court, all of the persons who would be unjustly charged, and required to pay such increased rates if such rates are permitted to remain in force and effect in violation of the existing laws and police regulations of the state and in non-compliance with the provisions of said Public Utilities Commission Law; that the penalty provided for a violation of said act is a fine of not less than Five Hundred Dollars ($500.00) and not more than Two Thousand Dollars ($2,000.00) for each offense; that under the provisions of said act, every violation thereof is constituted a separate and distinct offense; that in case of a continued violation, each day's continuance thereof is designated to be a separate and distinct offense; and that the enforcement of said act, through the institution of suits for penalties, would involve the commencement of a large number of proceedings against all of the corporations named defendants hereto, and would impose upon the courts and upon the public officers charged with the duty of enforcing the law, through the multiplicity of suits, such a burden that it would be impossible to adequately enforce the laws of the State of Illinois through said suits for penalties; and that answering defendants have no adequate remedy at law for the protection of the rights of the people of the State of Illinois, who are the users of said telegraph service, against such unauthorized, illegal and unjustified rates, and that the said complainant and the said corporation defendants, unless

62 prevented by the injunction of this court, will by their concerted action, destroy the rights of the answering defendants and of the People of the State of Illinois under the said Illinois Public Utilities Commission Law.

22. Wherefor the answering defendants pray:

1. That the Western Union Telegraph Company and the Postal Telegraph-Cable Company may be made defendants to this answer, and that writs of subpœna may issue, directed to the said defendants, Western Union Telegraph Company and Postal Telegraph-Cable Company, commanding each of them to appear herein and answer, but not under oath, answer under oath being hereby expressly waived, and that the complainant may be required in like manner (answer under oath being waived) to answer the allegations contained herein insofar as answering defendants have prayed for affirmative relief against complainant, and that complainant and the said corporation defendants may abide by, and perform such orders and decrees as the court may make in the premises.

2. That the said complainant, Albert S. Burleson, Postmaster General, and said corporation defendants, Western Union Telegraph Company and Postal Telegraph-Cable Company, may be, upon preliminary application, temporarily enjoined and restrained and by the final decree of this court perpetually enjoined and restrained from charging, demanding, collecting or receiving, for the transmission of messages by telegraph between points lying wholly within the State of Illinois, any rates other or different from the rates and tariffs applicable to the transmission of such messages as specified in the schedules heretofore filed by said corporations with
63 the Public Utilities Commission of Illinois and heretofore in force prior to the 29th day of March, 1919, and from charging, demanding, collecting or receiving, for the transmission of messages between points lying wholly within the State of Illinois, the increased rates therefor, as authorized and ordered by the said Postmaster General of the United States, until said increased rates and charges shall be approved by the Public Utilities Commission of Illinois, or until the further order of this court.

3. That answering defendants may have such further and other relief as equity may require and your honors may deem meet.

THOMAS E. DEMPCY,
WALTER A. SHAW,
PATRICK J. LUCEY,
JAMES H. WILKERSON,
FRANK H. FUNK,
As Members of, and Constituting the Public Utilities Commission of Illinois.
EDWARD J. BRUNDAGE,
Attorney General.

GEORGE T. BUCKINGHAM,
MATTHEW MILLS,
RAYMOND S. PRUITT,
Assistant Attorneys General,
Of Counsel.

64 STATE OF ILLINOIS,
County of Cook, ss:

I, Raymond S. Pruitt, being upon oath first duly sworn, depose and say that I am an Assistant Attorney General of the State of

Illinois and am duly authorized to make this affidavit in this suit on behalf of the Attorney General of the State of Illinois and the members of the Public Utilities Commission of Illinois of the State of Illinois; that I have read the foregoing petition and know the contents thereof, and know that the same is true.

RAYMOND S. PRUITT.

Subscribed and sworn to before me this 12th day of April, A. D. 1919.

MAE BRYANT,
Notary Public.

[SEAL.]

EXHIBIT A.

Resolution.

Whereas, It has been brought to the attention of the Commission that Albert S. Burleson, Postmaster General, in charge of the telegraph lines in Illinois, has promulgated certain telegraph rates, increasing the rates for intrastate telegraph service within the State of Illinois without compliance with the general orders and rules of this Commission, with reference to filing schedules thereof with this Commission,

Be it resolved, That Edward J. Brundage, Attorney General, be, and is hereby, requested to take such steps as he may deem necessary and appropriate to prevent the said increase in rates for telegraphic service within the State of Illinois, and

Be it further resolved, That the Secretary be directed to transmit copy of this resolution at once to the Attorney General.

[Endorsed:] Filed April 14, 1919. T. C. MacMillan, Clerk.

And afterwards, to wit: on the 14th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Francis E. Baker, Circuit Judge, Honorable George T. Page, Circuit Judge, Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Order.

Before Circuit Judge Baker, Circuit Judge Page, and District Judge Landis.

This cause coming on for hearing upon the motion of the complainant for a temporary injunction pursuant to the prayer of the

bill, and all parties being present by counsel, and the court having considered the bill, and being fully advised in the premises.

It is ordered that a temporary injunction issue herein, restraining, until the further order of this court, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, and each of them, and each of their agents, deputies and employees from interfering, directly or indirectly, by suit or other prosecution, civil or
68 criminal, or in any other manner whatsoever, with plaintiff or any of his agents or employees in charging and collecting for telegraphic service and leased wire service the rates prescribed by plaintiff's said order of March 29, 1919, or any other charges that may be hereafter prescribed by plaintiff for such service.

BAKER, *C. J.*
PAGE, *C. J.*
4/14/19. K. M. L., *D. J.*

69 And on to wit: the 15th day of April, 1919, there was filed in the Clerk's office of said Court a certain Notice in words and figures following, to wit:

70 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

To Henry S. Robbins, Solicitor for Complainant:

You will please take notice that on Tuesday, the 15th day of April, 1919, at the opening of court, I shall appear before His Honor, Judge Landis, in his court room in the Federal Building, Chicago, and shall ask to dismiss, as to the defendants, Western Union Telegraph Company and Postal Telegraph & Cable Company, the answer and cross petition of the Public Utilities Commission of Illinois and the Attorney General of Illinois, and shall ask that a rule be entered upon the complainant to answer same within five days, and that said cause be set down for hearing on Monday, April 21, 1919; at which time and place you may appear if you so see fit.

EDWARD J. BRUNDAGE.

Received a copy of the above notice this — day of April, A. D. 1919.

HENRY S. ROBBINS,
Solicitor for Complainant.

[Endorsed:] Filed Apr. 15, 1919. T. C. MacMillan, Clerk.

71 And to wit: the 15th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

72 In the District Court of the United States, Northern District of Illinois, Eastern Division.

TUESDAY, April 15, 1919.

Present: Honorable Kenesaw M. Landis, District Judge.

Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Upon motion of the defendants, it is ordered by the Court that the Answer and Cross-Petition of the Public Utilities Commission of Illinois and the Attorney General of Illinois, filed herein, be and the same hereby is dismissed as to cross-defendants, Western Union Telegraph Company and Postal Telegraph-Cable Company.

It is further ordered that the complainant reply to Answer of the defendants, heretofore filed herein, in five days from this date, and that said cause be set down for hearing on Monday, April 21, 1919.

73 And on to-wit: the 21st day of April, 1919, there was filed in the Clerk's office of said Court a certain Stipulation in words and figures following, to-wit:

74 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Stipulation.

For the purposes of this suit, and not otherwise, it is stipulated that on January 20, 1919, pursuant to the request of the Public Utilities Commission of Illinois, defendants in the above entitled cause, the Attorney General instituted, in the Superior Court of Cook County, a suit for the purpose of enjoining the Chicago Telephone Company and the American Telephone & Telegraph Company and the presi-

dent of each of them, from putting into effect in the State of Illinois certain increased charges and tariffs for long distance telephone service between points lying wholly within the State of Illinois, which had been prescribed by the plaintiff herein, acting under the resolution set out in the bill herein, under which said Postmaster General had taken possession of, and the telephone systems of said Chicago Telephone Company and said American Telephone & Telegraph Company and under which they were being operated.

75 and that the Honorable Charles M. Foell, Chancellor of said Superior Court, on motion of said Attorney General, issued a temporary injunction enjoining said defendants to said suit and their agents from putting in force said increased telephone rates until the further order of said court, and that said judge has, after full argument, upon the final hearing of said cause, rendered a decision and filed a written opinion in said cause holding that the plaintiffs in said suit are entitled to have said temporary injunction made permanent.

EDWARD J. BRUNDAGE,
Attorney General.

[Endorsed:] Filed April 21, 1919. T. C. MacMillan, Clerk.

75½ And on to-wit: the 21st day of April, 1919, there was filed in the Clerk's office of said Court a certain Stipulation of Facts in words and figures following, to-wit:

76 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Stipulation of Facts.

For the purpose of facilitating the final hearing of the above entitled cause, the parties hereto, by their respective solicitors, hereby enter into the following stipulation of facts, and for the purposes of this proceeding only and for no other purpose whatsoever, hereby stipulate and agree as follows:

1. Defendants stipulate and agree that the complainant, Albert S. Burleson, Postmaster-General of the United States, is a citizen of the State of Texas, having an official residence in the city of Washington, in the District of Columbia; that the defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, and Edward J. Brundage, Attorney General of Illinois, are citizens and residents of the State of Illinois, as charged in said bill of complaint; defendants also admit all of the

facts set forth and well pleaded in paragraphs 1 to 7 inclusive, of complainant's bill of complaint; also that complainant did on March 29, 1919, issue the order set out in paragraph 8 of said bill of complaint, but defendants deny that said order was lawful,
77 or that the increase in rates for telegraph service put into effect pursuant thereto was necessary or lawful; defendants also admit all the facts set forth and well pleaded in paragraph 9 of said bill of complaint, and that the Public Utilities Commission of Illinois on April 4, 1919, entered the order set forth in Exhibit A to defendant's answer filed herein.

2. Defendants further admit that they claim the power to regulate rates to be fixed, charged and collected by the telegraph companies for telegraph service between points lying wholly within the State of Illinois, rendered while said companies were operated and controlled by the Postmaster-General, but expressly disavow any contention or claim that Congress, in the exercise of its war powers, might not or could not have by proper measures deprived the said Public Utilities Commission of Illinois of all right and authority to fix and regulate the said charges for intrastate service during the period of war with the Imperial German Government.

3. Defendants further admit that plaintiff claims under said resolution of July 16, 1918, the right to fix the rates and charges for intrastate telegraph service within the State of Illinois and other States, and also to the allegations of facts well pleaded in paragraphs 13 and 14 of said bill of complaint.

4. Plaintiff, for the purposes aforesaid, admits all allegations of fact well pleaded contained in paragraphs 15 and 18 inclusive, of the answer filed by the defendants in this cause.

78 5. Plaintiff further admits that at all times subsequent to the said 31st day of July, 1918, and up to the 29th day of March, 1919, the lines of the Western Union Telegraph Company and the Postal Telegraph-Cable Company were continuously operated so as to furnish intrastate telegraph service to the public between the points lying wholly within the State of Illinois and that said operation was continuously under the direction and control of the Postmaster-General at the same rates heretofore charged and collected for such intrastate service and accepted and approved by said Public Utilities Commission of Illinois.

6. Plaintiff further admits that the rates which the Postmaster General has instituted and promulgated and which are now being collected and received for intrastate telegraph business are approximately twenty per cent. higher than those heretofore enforced; that said increased schedule and rates have not been by said Public Utilities Commission found to be reasonable and just and have not been submitted to said Public Utilities Commission in any way.

HENRY S. ROBBINS,
Solicitor for Plaintiff.

EDWARD J. BRUNDAGE,
Attorney General of Illinois,
Solicitor for Defendants.

[Endorsed:] Filed April 21, 1919. T. C. MacMillan, Clerk.

79 And on to-wit: the 26th day of April, 1919, come the plaintiff herein by his attorney and filed in the Clerk's office of said Court his certain Motion to Strike in words and figures following, to-wit:

80 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Motion to Strike.

Now comes the plaintiff and moves to strike from the answer paragraphs 15 to 22, inclusive, as irrelevant, impertinent and immaterial.

ALBERT S. BURLESON,
Postmaster General of the United States,
By HENRY S. ROBBINS,
One of His Solicitors.

(Endorsed:) Filed April 26, 1919. T. C. MacMillan, Clerk.

81 And on to-wit: the 26th day of April, 1919, come the plaintiff herein by his attorney and filed in the Clerk's office of said Court his certain Answer to Cross-Bill in words and figures following, to-wit:

82 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Answer to Cross-Bill.

Now comes the plaintiff and for answer to so much of said answer of the defendants as is in the nature of a cross bill and as it is proper for plaintiff to make answer unto, says, that plaintiff denies each and every of the allegations of said answer except such as are stipulated

by plaintiff in the stipulation signed by him and heretofore filed in the above entitled cause, and having fully answered plaintiff asks to be hence dismissed, etc.

ALBERT S. BURLESON,
Postmaster General of the United States,
By HENRY S. ROBBINS,
One of His Solicitors.

(Endorsed:) Filed April 26, 1919. T. C. MacMillan, Clerk.

83 And to-wit: the 26th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to-wit:

84 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Decree.

Before Honorable Kenesaw M. Landis, District Judge.

This cause came on for a final hearing at this term and was argued by counsel, and thereupon upon consideration thereof,

It was ordered, adjudged and decreed That the motion of plaintiff to strike from the answer paragraphs 15 to 22, inclusive, thereof, and the same is hereby denied, and thereupon plaintiff filed his Answer to said cross-bill of said defendant.

It is further ordered, adjudged and decreed That the plaintiff's bill be dismissed for want of equity, and that a permanent injunction issue herein enjoining the plaintiff and each of his agents, deputies and employees from charging, demanding, collecting or receiving, for the transmission of messages by telegraph between points lying wholly within the State of Illinois, any rates other or different from the rates and tariffs applicable to the transmission of such messages as specified in the schedules heretofore filed by said

85 corporations with the Public Utilities Commission of Illinois and heretofore in force prior to the 29th day of March, 1919, and from charging, demanding, collecting or receiving, for the

transmission of messages between points lying wholly within the State of Illinois, the increased rates therefor, as authorized and ordered by the said Postmaster General of the United States, until said increased rates and charges shall be approved by the Public Utilities Commission of Illinois.

Enter:

——— ———,
Judge.

86 And on to-wit: the 26th day of April, 1919, come- the plaintiff herein by his attorney and filed in the Clerk's office of said Court his certain Petition for Appeal in words and figures following, to-wit:

87 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Petition for Appeal.

The above named plaintiff, conceiving himself to be aggrieved by the final decree of this court, entered on the 26th day of April, 1919, hereby appeals from said decree to the Supreme Court of the United States for the reasons specified in the assignments of error this day filed herein, and prays that this appeal may be allowed, and that a transcript of the record of all proceedings herein may be forthwith transmitted to said Supreme Court, and that the temporary injunction herein be continued in force for a period of 10 days for the purpose of enabling plaintiff to apply to the Supreme Court for a further continuance of said injunction.

ALBERT S. BURLESON,
Postmaster General of the United States.
By HENRY S. ROBBINS,
One of his Solicitors.

(Endorsed:) Filed April 26, 1919, T. C. MacMillan, Clerk.

88 And on to-wit: the 26th day of April, 1919 ,come- the plaintiff herein by his attorney and filed in the Clerk's office of said Court his certain Assignment of Errors in words and figures following, to-wit:

89 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Assignment of Errors.

Now comes the plaintiff and files the following assignments of error for grounds of reversal on appeal in the above-entitled cause:

1. That the District Court erred in not granting plaintiff's motion to strike out paragraphs 15 to 22 of the answer of defendants.
2. That the District Court erred in dismissing plaintiff's bill for want of equity.
3. That the District Court erred in not entering a decree making permanent the temporary injunction theretofore issued in said cause.
4. That the District Court erred in not entering a decree in pursuance of the prayer of the bill.
5. That the District Court erred in not dismissing the cross-bill for want of equity.
6. That the District Court erred in entering the decree on the cross-bill enjoining plaintiff.

90 7. That the District Court erred in entering the final decree in the above-entitled cause.

ALBERT S. BURLESON,
Postmaster General of the United States.
By HENRY S. ROBBINS,
One of His Solicitors.

(Endorsed:) Filed April 26th, 1919, T. C. MacMillan, Clerk.

91 And to-wit: the 26th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to-wit:

92 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Order.

Now comes the plaintiff, and it appearing to the court that a petition for appeal and assignments of error have been filed herein:

It is ordered That an appeal to the Supreme Court of the United States from the decree entered herein on the 26th day of April, 1919, be, and the same is, allowed, and that for the purpose of enabling said court to decide said appeal, a transcript of the record herein be forthwith transmitted to said court, and that the temporary injunction issued in the above-entitled cause remain in force for the period of 10 days from the entry of said decree, for the purpose of enabling the plaintiff to apply to the Supreme Court of the United States for a further continuance of said injunction pending said appeal.

93 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this Court in the cause entitled Albert S. Burleson, Postmaster General, plaintiff, versus Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, Defendants, No. 1209, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 26th day of April A. D. 1919.

[Seal of the District Court of the United States for the Northern District of Illinois.]

T. C. MACMILLAN,
Clerk.
By ARTHUR E. CLAUSSEN,
Deputy Clerk.

94 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, Constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Albert S.

Burleson, Postmaster General, is appellant, and you are appellee to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Kenesaw M. Landis, Judge of the District Court of the United States, this 26th day of April, in the year of our Lord one thousand nine hundred and 19.

95 I hereby accept service of the within citation for all of the appellees.

EDWARD J. BRUNDAGE,
Attorney General of the State of Illinois.

[Endorsed:] No. 1209. Supreme Court of the United States. Albert S. Burleson, Postmaster General, vs. Thomas E. Dempcy, et al, Citation to the Supreme Court of the United States.

Endorsed on cover: File No. 27,092. N. Illinois D. C. U. S. Term No. 1006. Albert S. Burleson, Postmaster General, appellant, vs. Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the Public Utilities Commission of Illinois et al. Filed April 29, 1919. File No. 27,092.

No. 1006

APR 29 1919

JAMES D. MAHER,

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1918.

ALBERT S. BURLESON, POSTMASTER GENERAL,
Plaintiff, and Appellant,

vs.

THOMAS E. DEMPCY, WALTER A. SHAW, PATRICK J. LUCEY, JAMES H. WILKERSON, and FRANK H. FUNK, Constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, EDWARD J. BRUNDAGE, Attorney General of the State of Illinois, *Defendant, and Appellees.*

MOTION BY THE APPELLEES TO ADVANCE.

EDWARD J. BRUNDAGE,
Attorney General of the State of Illinois.
GEO. T. BUCKINGHAM,
RAYMOND S. PRUITT,
MATTHEW MILLS,
Assistant Attorneys General of the State of Illinois.
Attorneys for Appellees.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1918.

ALBERT S. BURLESON, POSTMASTER GENERAL,
Plaintiff, and Appellant,

vs.

THOMAS E. DEMPCY, WALTER A. SHAW, PATRICK J. LUCEY, JAMES H. WILKERSON, and FRANK H. FUNK, Constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, EDWARD J. BRUNDAGE, Attorney General of the State of Illinois, *Defendant, and Appellees.*

MOTION BY THE APPELLEES TO ADVANCE.

Come now the Appellees in Case No. —— and move the Court to advance said cause for hearing and to set the said Case No. —— for hearing on May 5, A. D. 1919, with the cases of *Frederick J. MacLeod and Everett E. Stone, constituting the Public Service Commission of Massachusetts v. The New England Telephone & Telegraph Co.*, No. 957, October Term, A. D. 1918, and *State of South Dakota, ex rel, Byron S. Payne, as Attorney General, and John J. Murphy and P. W. Dougherty, as and constituting*

the Board of Railroad Commissioners of the State of South Dakota, v. Dakota Central Telephone Company, et al., No. 967, and *Northern Pacific Railway Co., et al., vs. State of North Dakota*, on the relation of the Attorney General, No. 976.

The grounds for this motion are:

First. That all of said cases arise out of the effort of Albert S. Burleson, Postmaster General of the United States, to put into force and effect certain advanced rates and charges for the transmission of messages by telegraph and telephone between various points in the United States during the period while certain telegraph and telephone companies are being operated by said Postmaster General pursuant to a Congressional Resolution of July 16, 1918.

Second. In all of said cases, and in this case, it is claimed by the state authorities concerned in this litigation that said Congressional Resolution, authorizing the operation and control of said telegraph and telephone lines by the President of the United States, expressly provided that nothing contained therein should be construed to amend, repeal, impair or affect the lawful police regulations of the several states, and that Congress, by said proviso, intended to retain in full force and effect the power of the states to fix the rates to be charged and collected by telegraph and telephone companies during the period of Federal control.

Third. Not only are all the questions involved in Case No. —— identical with the questions involved in said above mentioned cases, which have been set for hearing on May 5, 1919, but in said case No. —— all questions regarding the right of various state authorities to sue the Postmaster General are eliminated because of the fact that the Postmaster General himself instituted the litigation by appearing in the Federal Court and asking for an injunction against state authorities to restrain their interference with increased rates ordered and promulgated by him.

For this additional reason the public importance of the questions involved suggest the advisability and necessity of an early hearing and decision of this particular case, in order that the power and authority of the Postmaster General to fix rates during the period of Government control may be defined and determined by this court without reference to the question of the immunity of the Postmaster General from suit, or other matters of jurisdiction not affecting the merits of the real issues to be decided.

Notice of the intention of the Appellees in Case No. —— to make this Motion has been served upon Appellant in that case.

EDWARD J. BRUNDAGE,
Attorney General of the
State of Illinois.
GEO. T. BUCKINGHAM,
RAYMOND S. PRUITT,
MATTHEW MILLS,
Assistant Attorneys General of the
State of Illinois.
Attorneys for Appellees.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ALBERT S. BURLESON, POSTMASTER GENERAL, appellant,

v.

THOMAS E. DEMPCY, ET AL., CONSTITUTING the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, and Edward J. Brundage, attorney general of Illinois. } No.—.

APPEAL FROM THE DISTRCIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

RESPONSE OF APPELLANT TO MOTION TO ADVANCE.

Comes now the appellant in the above-stated case by the Solicitor General, and in response to the motion to advance the cause for hearing on May 5, 1919, presented therein by the appellee, says:

That the final decree in said case was rendered on April 26, 1919; that while an appeal was applied for by counsel for the Postmaster General resident in Chicago, Ill., on said date and was granted, the record in said case was not filed by said appellant but was filed by the appellees without the consent of the said appellant.

115660—19

Appellant has serious doubt as to whether this court or the United States Circuit Court of Appeals for the Seventh Circuit has jurisdiction to entertain said appeal; that said case appears to involve the construction of the Joint Resolution of Congress of July 16, 1918, and of the respective powers conferred upon the President of the United States and his appointees thereby, and those reserved to the several States under the proviso of said Resolution and not any question arising under the Constitution of the United States.

For this reason appellant does not join in said motion to advance but submits to the court that said case should not be advanced at the present time.

ALEX. C. KING,
Solicitor General.

APRIL, 1919.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ALBERT S. BURLESON, POSTMASTER GENERAL, appellant,
v.
THOMAS E. DEMPCY, ET AL., MEMBERS OF the Public Utilities Commission of Illinois, and Edward J. Brundage, Attorney General of the State of Illinois, appellees.

No. 1006.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION TO CONTINUE SUPERSEDEAS.

Comes now Albert S. Burleson, Postmaster General, appellant in the above-stated case, by Alexander C. King, Solicitor General, and Henry S. Robbins, representing him as attorneys in this court, and respectfully shows:

That the above-stated case is a bill in equity filed by the appellant against the Members of the Public Utilities Commission of Illinois and Edward J. Brundage, Attorney General of said State, to enjoin them from interfering with the carrying out of the

order of the Postmaster General in charge of certain telegraph systems and lines in the State of Illinois, possession and control of which had been taken by the President of the United States as provided in Joint Resolution of Congress dated July 16, 1918, empowering him so to do, and the operation of which said lines had been by the said President of the United States committed to the said appellant Burleson, as Postmaster General, by proclamation of said President bearing date July 22, 1918. Said systems were in the possession of said President, and said Postmaster General as his representative, and were being operated by him, using for such purpose the respective corporations, their officers, agents and employees, the owners of said telegraph systems, who were operating the same entirely as the agents and representatives of said President and said Postmaster General.

Said appellant by an order, on or about March 29, 1919, had directed that a schedule of rates and charges for business transacted over said telegraph systems should be put into effect on April 1, 1919, and the same had been so put into effect, and that the Public Utilities Commission of the State of Illinois claimed that appellant was without authority to put into effect said schedule of rates and charges for telegraph service, and that the said rates and charges of said telegraph companies could not be changed or altered without the consent and approval of said Public Utilities Commission.

Appellant was informed and believed, and upon such information and belief charged the fact to be that the said Public Utilities Commission, undertaking to proceed under the laws of the State of Illinois, would endeavor to interfere with the charging of said rates for telegraph service in the operation of said telegraph systems, would endeavor to subject the persons and corporations operating said system on behalf and as agents of appellant to penalties; and that not only an interference with business but a multiplicity of suits would be thus produced; and that in order to avoid the same and prevent the loss resulting therefrom, appellant on April 7, 1919, filed a bill in the District Court of the United States for the Northern District of Illinois against the Members of said Public Utilities Commission to enjoin any interference with appellant, his agents, representatives, and servants in the conduct of said telegraph business in the charging of said rates.

Application for temporary injunction upon the said bill was made before three judges, and the temporary injunction was granted as prayed for. Thereafter, on April 21, final hearing was had in said cause upon the pleadings and stipulations of counsel as to the facts before the Honorable Kenesaw M. Landis, United States District Judge for the Northern District of Illinois, and on April 26, 1919, a final decree was rendered in said cause, dissolving the temporary injunction, finally denying the injunction prayed for by appellant, and dismissing his bill for want of equity; and upon the answer of said defendants in

said case in the nature of a cross bill, granting an affirmative injunction against your appellant from charging or collecting any rates for intrastate messages in Illinois other than those specified in the schedule theretofore filed by the corporations with the Public Utilities Commission of Illinois, and from charging the rates authorized and ordered by your appellant until the same should be approved by said Public Utilities Commission.

Appellent shows that an appeal was taken to this court. In allowing the petition for appeal, the said Judge granted a supersedeas to the said decree dissolving the temporary injunction and enjoining your appellant as above stated, to continue for the space of ten days from April 26, 1919, "for the purpose of enabling the plaintiff to apply to the Supreme Court of the United States for a further continuance of said injunction pending said appeal."

Appellant shows if compelled to reestablish the schedule of rates formerly charged by the corporations owning said telegraph systems pending the hearing and determination of the appeal in this case, that in the event the said decree of the District Court should be reversed it would be practically impossible to collect from the patrons of said telegraph systems any increase in charges made over the former telegraph rates, and that the same would in large part be a total loss. That in the event the said decree should be affirmed it would be a simple matter for appellant to refund any overcharges which might be thus made;

and that the same could be controlled in the final disposition of said case. That the increase in rates made by the schedule prescribed by appellant was due to the fact that the revenues were needed in the operation of said telegraph systems by the United States under the said Joint Resolution; and that the loss of any of said revenues would create a deficit which would have to be paid by the United States, and for the reasons hereinabove the loss would be one which could not be repaired.

For the foregoing reasons appellant prays that the supersedeas of said final decree be and the temporary injunction awarded continued by this Honorable Court pending the hearing and disposition of this cause on appeal.

ALEX. C. KING,
Solicitor General.
HENRY S. ROBBINS,
MORRIS M. TOWNLEY,
Solicitors for Appellant.

MAY, 1919.

○

INDEX.

CITATIONS.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1918.

No. 1006.

ALBERT S. BURLESON, Postmaster General, *Appellant,* *vs.* THOMAS E. DEMPCY, et al., Members of the Public Utilities Commission of Illinois, and EDWARD J. BRUNDAGE, Attorney General of the State of Illinois, *Appellees.*	Appeal from United States District Court, Northern District of Illinois.

APPELLANT'S BRIEF.

STATEMENT.

This is an appeal by the Postmaster General from a final decree granting to the Public Utilities Commission of Illinois a permanent injunction restraining the Postmaster General from charging for intrastate telegrams in Illinois increased rates, which by his order had become operative on the first day of April last.

The President, on the 22d day of July, 1918, by proclamation (Rec., 3), assumed the "supervision, possession, control and operation" of the telegraph systems of the country, and delegated the

control and operation of them to the Postmaster General pursuant to a joint resolution adopted by Congress on July 16, 1918, in the words and figures following:

"RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the President during the continuance of the present war is authorized and empowered, whenever he shall deem it necessary for the national security or defense, to supervise or to *take possession and assume control* of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to *operate the same* in such manner as may be needful or desirable for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: Provided, That just compensation shall be made for such supervision, possession, control, or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code: *Provided further, That nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems.*"

The Public Utilities Commission of Illinois was created by statute (the material sections of which are printed in the appendix to this brief), and was thereby given general supervision of all "public utilities" of the state, with power to prescribe the forms of the accounts to be kept by them, and the standard of service to be furnished (Sec. 54), to condemn their existing practices and equipment and require new equipment (Sec. 54), and is authorized to institute suit in a Circuit Court of the state or other court of concurrent jurisdiction "for the purpose of having such violations or threatened violations (of the statute) stopped or prevented either by mandamus or injunction." (Sec. 75.) This statute also requires every "public utility" within the state to "obey and comply with each and every * * * order * * * or regulation * * * prescribed by the Commission * * * in * * any * * * matter in any way relating to or affecting its business as a public utility" (Sec. 9); to furnish to the Commission in the form prescribed by it annual reports, and monthly reports when required; and no such public utility may make any change in rates or in any practice until 30 days' notice to the Commission, and no increase in rates "under any circumstances whatever except upon a showing before the Commission and a finding by the Commission that such increase is justified," and upon such hearing the Commission is required to establish what the rates should be. (Secs. 19, 36 and 41.) Nor may any public utility install any new plant or equipment without a certificate of the Commission. (Sec. 55.)

This Public Utilities Commission had applied to a state court at Chicago and secured an injunction

restraining the Postmaster General from charging, as respects intrastate service in Illinois, certain increased *telephone* rates (Rec., ...), and was threatening similar action respecting the increased rates for intrastate telegrams, when the Postmaster General applied to the United States District Court at Chicago for an injunction, alleging as one of the grounds therefor, that this state statute, if construed (as claimed by these state officials) to apply to the Postmaster General in the operation of these telegraph systems, violated those provisions of the Constitution of the United States, which confer on Congress and the President power to conduct war, and confer on the United States immunity from suit.

On April 14, 1919, an application for a temporary injunction was heard by three judges under Section 266 of the Judicial Code, and they granted the Postmaster General a temporary injunction restraining the Public Utilities Commission from interfering with them.

Thereafter Judge Landis set the case for final hearing on April 21, 1919. The Public Utilities Commission filed its answer, which was partly in the nature of a cross-bill. (Rec., 22.) A motion by the Postmaster General to strike out those sections of the answer constituting the cross-bill was overruled, and an answer was filed by the Postmaster General to the cross-bill.

A stipulation of facts was then entered into, and upon the final hearing Judge Landis entered a decree (Rec., 34) dismissing the Postmaster General's bill for want of equity, and granting a permanent injunction enjoining the Postmaster General and his

agents from demanding or collecting for the transmission of messages by telegraph between points lying wholly within the State of Illinois the increased telegraph rates prescribed by the Postmaster General "until said increased rates and charges shall be approved by the Public Utilities Commission of Illinois."

As the case involves the constitutionality of a state statute and the construction or application of the Federal Constitution, this appeal was taken by the Postmaster General directly to this court, and in the order allowing it the District Court directed that the temporary injunction remain in force for 10 days to enable the Postmaster General to apply to this court for a further continuance thereof pending this appeal.

This record presents for decision the following two questions:

(1) Does the immunity from suit existing in favor of the United States protect the Postmaster General from suit by the State Public Utilities Commission of Illinois?

(2) Does the proviso of the foregoing joint resolution of Congress reserve to the several states the right to prescribe what telegraph rates shall be collected by the Postmaster General upon intrastate messages?

ARGUMENT.

I.

The Postmaster General is here Immune from Suit.

The bill sought to enjoin the Public Utilities Commission from interfering with the Postmaster General's continuing in force in Illinois the intrastate rates fixed by him upon the ground, among others, that such suits, would be in effect suits against the United States. The cross-bill against the Postmaster General, constituted a suit of the very character which the bill sought to enjoin. The question whether such a suit is, in effect, against the United States is thus doubly presented, by the dismissal of the bill; and by the decree against the Postmaster General upon the cross-bill.

In *Carr* v. *United States,* 98 U. S. 437, this court said:

> "We consider it to be a fundamental principle that the Government cannot be sued except by its own consent; and certainly no State can pass a law which would have any validity for making the Government suable in its courts."

Does the immunity from suit enjoyed by the United States extend to the Postmaster General in the case at bar?

Appellees contend, and the District Court has decided, that the Postmaster General in the operation of these telegraph lines as the representative of the

President, is a "public utility" within the Illinois Statute, and that this Public Utility Commission—under the power conferred on it to compel by suit any public utility in Illinois to comply with the provisions of that statute—may maintain a suit to enjoin the Postmaster General as respects intrastate telegraph service in Illinois.

The Joint Resolution of Congress authorized the President to take possession, assume control and operate any telegraph system "in such manner as may be needful or desirable for the duration of the war." The President, having the inherent power to do so, delegated that power and control to the Postmaster General. Hence, the fixing of these rates by the Postmaster General was in effect the fixing of the rates by the President, as has been frequently decided by this court.

Wilcox v. *McConnel,* 13 Pet. 513.
United States v. *Eliason,* 16 Pet. 300.
Confiscation Cases, 20 Wall. 109.
Wolsey v. *Chapman,* 101 U. S. 770.
Runkle v. *United States,* 122 U. S. 557.

This is especially true under this resolution because—as we shall presently see—the control of these telegraph systems was one of the resources furnished the President with which to win the war, and he has control of them under his power as Commander-in-Chief in time of war.

Thus the question is, whether the President is immune from suit when in the possession and operation of a telegraph system which has been intrusted to him as one of the resources with which to conduct

a war. Is a suit, which seeks to interfere with his prescribing of intrastate rates, a suit against the United States within the immunity from suit which the United States enjoys?

If so, the Illinois statute authorizing this Public Utility Commission to sue violates the Constitution of the United States; for immunity from suit is one of the attributes of sovereignty, which (like the right to enact a penal code covering crimes against the United States) is by the Constitution conferred upon the United States, although not expressly mentioned therein. In other words, immunity from suit is one of the resulting powers arising out of the Constitution considered in its entirety.

Legal Tender Cases, 12 Wall. 534.

While the United States may consent to be sued and thus waive its immunity, this waiver can come only from Congress. No official of the United States can waive it.

Carr v. *United States*, 98 U. S. 437.
Stanley v. *Schwalby*, 162 U. S. 255, 269.
United States v. *Lee*, 106 U. S. 196, 222.

In *Stanley* v. *Schwalby*, *supra*, this court said:

> "It is a fundamental principle of public law, affirmed by a long series of decisions of this court, and clearly recognized in its former opinion in this case, that no suit can be maintained against the United States, or against their property, in any court, without express authority of Congress. 147 U. S. 512. See also *Belknap* v. *Schild*, 161 U. S. 10. The United States, by various acts of Congress, have consented to be sued in their own courts in certain classes of cases; but they have never consented to be sued

> in the courts of a State in any case. Neither the Secretary of War nor the Attorney General, nor any subordinate of either, has been authorized to waive the exemption of the United States from judicial process, or to submit the United States, or their property, to the jurisdiction of the court in a suit brought against their officers."

Hence the Postmaster General, by filing a bill in the District Court, did not waive immunity from suit, because (1) the Postmaster General could not waive immunity, and (2) immunity is not waived in a suit brought (as the Postmaster General's bill expressly was) to assert and secure immunity from suits by these state officials.

Nor is the proviso of the Joint Resolution of Congress a waiver of this immunity. It provides that

> "Nothing in this Act shall be construed * * * to impair or affect * * * the lawful police regulations of the several States."

All that this proviso does is to direct the President in the operation of these telegraph systems to respect the *lawful* police regulations of the States, and —if appellees are right in their contention—to charge for intrastate service only such rates as are approved by State authorities. It is one thing to prescribe a rule of conduct for an official of the United States to comply with (especially the President while engaged in conducting a war) and quite another, and a much more far-reaching one, to waive the immunity of the United States from suit.

It is inconceivable that Congress by this proviso intended to provide that the President, or his representative, should be subject to suit by forty-four different State public utilities commissions, and

should also be subject to suit by innumerable municipalities in States where (as in Texas) the rate making power is conferred on municipalities.

In *Public Service Commission* v. *New England Telephone & Telegraph Co.*, recently decided by the Supreme Court of Massachusetts, it was expressly held that such was not the effect of the proviso in question. Speaking by Chief Justice Rugg, the court said:

> "That proviso does not seem to us as reasonably susceptible of being stretched by implication to include a consent to be impleaded in the state courts in such a proceeding as this.
>
> Such consent is not commonly inferable from such a remote and equivocal phrase having direct and adequate reference to another matter."

We come now directly to the question whether a suit, which seeks to control the Postmaster General in the matter of intrastate telegraph charges, is, in legal effect, a suit against the United States. In answering this question, two distinct classes of cases are to be considered and reconciled. The first class of cases is where State or Federal officers are sued in a representative capacity, so that the decree, while nominally against the officers, in effect operates against the Government, either compelling the Government to perform its obligations, or directly adjudicating its rights and liabilities. In this class of cases, although the Government officials alone are the nominal defendants, it is held that the suit is in effect against the State, or the United States. The following cases illustrate the application of this principle:

Belknap v. *Schild*, 161 U. S. 18.
Louisiana v. *Jumel*, 107 U. S. 711.
Cunningham v. *R. R. Co.*, 109 U. S. 446.
Hagood v. *Southern*, 117 U. S. 52.
Oregon v. *Hitchcock*, 202 U. S. 60.
Naganab v. *Hitchcock*, 202 U. S. 473.
International Co. v. *Bruce*, 194 U. S. 601.
New Mexico v. *Lane*, 243 U. S. 52.
Louisiana v. *McAdoo*, 234 U. S. 627.
Goldberg v. *Daniels*, 231 U. S. 218.
Louisiana v. *Garfield*, 211 U. S. 70.
Wells v. *Roper*, 246 U. S. 335.
Re Ayres, 123 U. S. 443.
Antoni v. *Greenhow*, 107 U. S. 769.

The second class of cases is where suits are brought against defendants who, claiming to act as officers of a State, or of the United States, but without actual legal authority, are about to commit acts of wrong against the plaintiff, which, if committed, would render such officials personally liable to the plaintiff for such wrongful conduct. In this class of cases, the offending officials are suable in their individual capacity, and decrees rendered in such suits bind the defendants solely in their individual capacity. In this class of cases, the action of the court does not affect the official conduct of the defendants, nor does it adjudicate any of the rights or liabilities of the Government, nor is the decree *res judicata* against the Government. Cases of this character, among others, are:

Philadelphia Co. v. *Stimson*, 223 U. S. 605.
Lane v. *Watts*, 234 U. S. 525.
Garfield v. *Goldsby*, 211 U. S. 249.

Within the first of the above classes fall all cases, where the United States, through one of its officials, is in *possession and control* of property, and a decree would interfere therewith, or impair the government's use of such property. Thus in

Belknap v. *Schild,* 161 U. S. 10, 18, 24,

a patentee filed a bill against a Commodore of the United States Navy, and others, in possession of a caisson gate, in the construction of which the plaintiff claimed his patent had been infringed, and sought an injunction against further infringement, but this court, in dismissing the bill, said:

> "But no injunction can be issued against officers of a State, to restrain or control the use of property already in the possession of the State, or money in its treasury when the suit is commenced; or to compel the State to perform its obligations; or where the State has otherwise such an interest in the object of the suit as to be a necessary party. * * *
>
> In the present case, the caisson gate was a part of the dry dock in a navy yard of the United States, was constructed and put in place by the United States, and was the property of the United States, and held and used by the United States for the public benefit. If the gate was made in infringement of the plaintiff's patent, that did not prevent the title in the gate from vesting in the United States. The United States, then, had both the title and the possession of the property. The United States could not hold or use it, except through officers and agents. Although this suit was not brought against the United States by name, but against their officers and agents only, nevertheless, so far as the bill prayed for an injunction, and for the destruction of the gate in question, the defendants had no individual interest in the con-

troversy; the entire interest adverse to the plaintiff was the interest of the United States in property of which the United States had both the title and the possession; the United States were the only real party, against whom alone in fact the relief was asked, and against whom the decree would effectively operate; the plaintiff sought to control the defendants in their official capacity, and in the exercise of their official functions, as representatives and agents of the United States, and thereby to defeat the use by the United States of property owned and used by the United States for the common defense and general welfare; and therefore the United States were an indispensable party to enable the court, according to the rules which govern its procedure, to grant the relief sought; and the suit could not be maintained without violating the principles affirmed in the long series of decisions of this court, above cited."

International Co. v. *Bruce*, 194 U. S. 601, 606:

Where the owner of a patent for improvements in stamp cancelling and postmarking machines sought to enjoin a postmaster from using in the service of the United States machines said to infringe the patent, and this court, dismissed the suit, reaffirmed the preceding case, and said:

"In the case at bar the United States is not the owner of the machines, it is true, but it is a lessee in possession, for a term which has not expired. It has a property, a right *in rem*, in the machines, which, though less extensive than absolute ownership, has the same incident of a right to use them while it lasts. This right can not be interfered with behind its back, and, as it cannot be made a party, this suit, like that of *Belknap* v. *Schild*, must fail. The answer to the question certified must be no."

Goldberg v. *Daniels*, 231 U. S. 218:

A suit against the Secretary of the Navy to compel him to deliver to plaintiff an old cruiser on the sale of which plaintiff was the highest bidder, and this court, in sustaining a dismissal, said:

> "The United States is the owner in possession of the vessel. It cannot be interfered with behind its back, and, as it cannot be made a party, this suit must fail."

Louisiana v. *Garfield*, 211 U. S. 70, 77:

A bill brought by the State of Louisiana against the Secretary of the Interior, claiming certain swamp lands and seeking to enjoin the Secretary of the Interior from making a disposition of them. This court sustained a demurrer on the ground that the suit was really one against the United States, saying:

> "It raises questions of law and of fact upon which the United States would have to be heard. * * * The United States might, and undoubtedly would, deny the fact of such possession, and that fact cannot be tried behind its back. It follows that the United States is a necessary party and that we have no jurisdiction of this suit."

Cunningham v. *Macon R. R.*, 109 U. S. 446:

Where the State of Georgia endorsed bonds of the railroad and subsequently acquired title and possession thereof under a sale on foreclosure. Holders of other mortgage bonds filed a bill against the governor of the State and certain agents of the State connected with the railroad. There, the State was in the possession and operation of the railroad, and the case was therefore identical with the case at

bar. This court, in directing a dismissal of the suit, said:

> "In the case now under consideration the State of Georgia is an indispensable party. It is, in fact, the only proper defendant in the case. No one sued has any personal interest in the matter or any official authority to grant the relief asked. * * * The State is in the actual possession of the property, and the court can deliver no possession to the purchaser. The entire interest adverse to plaintiff in this suit is the interest of the State of Georgia in the property, of which she has both the title and possession."

These cases rest upon the principle that in equity at least, no suit will lie for a decree changing the ownership, possession, use of, or revenue from, property, when the real party in interest is not a party to the suit. The particular controversy is withdrawn from the jurisdiction of the court, because the court cannot get jurisdiction of the person of the real defendant, namely, the United States. In such a case, jurisdiction of the United States cannot be acquired by making one of its agents a party any more than jurisdiction of an individual owner of property can be acquired by making his agent the sole party to the suit. Not being able to acquire jurisdiction of the person, the court is without jurisdiction to decide or enter any judgment or decree. This is what is meant by immunity from suit. Hence this immunity exists, regardless of whether the court may think that the United States is right or wrong in its construction of the law. It is the entire withdrawal from the court of the right to decide a controversy to which the Government is a necessary party. It withdraws from this court in the present

case the right to decide, upon the cross-bill whether the construction put by the Postmaster General upon this proviso is the correct one or not.

The case at bar falls clearly within the principle established by the foregoing cases. The United States, through its Postmaster General, is in the actual possession of these telegraph lines and is actually operating them, and actually prescribing and enforcing all operating rules and regulations. Congress provided the President with no appropriation, thus clearly indicating its purpose to have the operation of these telegraph systems self-supporting. Thus, the question of the rates to be charged—no less than the wages to be paid—is one of the most important questions of operation. All of the revenues received from operations belong to the United States. All expenses incident to operation must be paid by the United States. If the operation results in a profit, that belongs to the United States, and if not profitable, the loss is that of the United States. The decree of the District Court in the case at bar substantially lessens the revenue derived by the United States from operation. It compels the United States to furnish service at a lower rate to be fixed by the State of Illinois. Thus the decree of the lower court affects and adjudicates the rights of the United States, and only the rights of the United States. While in form the decree merely enjoins the Postmater General from charging certain rates, *in effect the decree operates as a mandatory injunction to compel the United States to furnish telegraph service at rates approved by the Public Utilities Commission of Illinois.* Such inevitably is its practical effect where, as here, the Postmaster General is operating

an industry of a *quasi* public character. It thus becomes obvious that the present decree binds the Postmaster General strictly in his official capacity, and not merely in his individual capacity. The decree effectively adjudicates the rights and liabilities of the United States with respect to the operation of certain telegraph lines which are now under the control and operation of the United States within the State of Illinois. This demonstrates that any suit which seeks to control the Postmaster General in the matter of intrastate charges is, in effect, a suit against the United States.

That such suits are in effect against the United States has been held in recent decisions of the Supreme Courts of Massachusetts, Oklahoma, Louisiana and Wisconsin. The opinion of the Supreme Court of Massachusetts is incorporated in the record of a case argued with this case. Copies of the opinions of the Supreme Courts of Oklahoma, Louisiana and Wisconsin are filed with the court.

II.

The proviso to the joint resolution did not reserve to the States the right to prescribe intrastate rates.

The language of the proviso is as follows:

> "That nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems."

It seems fair to presume that had Congress intended to reserve to the States the power to fix the intrastate rates to be charged by the President, the Act would have so provided in unambiguous language. Congress, however, did not say that the power should be reserved to the States to prescribe intrastate rates. The proviso merely purports to preserve "the lawful police regulations of the several States." The contention of the appellees that this proviso reserves to the states the right to prescribe intrastate rates is untenable for the following reasons:

1. If so construed, the act of Congress would be in violation of the Constitution of the United States. The question presented has reference to the nature and extent of the war power conferred by the Constitution upon the President.

The Constitution vests in the President "the executive power of the United States. This confers

upon the President all power which is executive, as distinguished from power which is legislative or judicial. In addition to this, the Constitution makes the President the commander-in-chief of the Army and Navy of the United States. As the commander-in-chief of the Army and Navy, and as the seat of all executive power, the President is vested *by the Constitution* with exceedingly broad powers relative to the prosecution of war. Congress, it is true, possesses the constitutional power to "*declare* war," but obviously, the mere *declaration* of war, and its *prosecution* to a successful outcome, are radically different acts. The phraseology of the Constitution in this respect is significant in the light of its history. The Articles of Confederation provided that:

> "The United States in Congress assembled shall also have the sole and exclusive right and power of * * * making rules for the government and regulation of the said land and naval forces and *directing their operations.*"

In the earlier proposals and the first draft of the Constitution, Congress was given power to "make war." In Hamilton's proposal for a Constitution, it was provided "the Senate to have the sole power of declaring war," and the executive "to have the direction of war when authorized or begun." (1 Farrand's Records of the Constitutional Convention, 292.) Another early suggestion was that the President was "to direct all military operations," to which it was proposed to add, "but none of the executives personally to command any military expedition." (2 Farrand's Records of the Constitutional Convention, 157, 244, 247.) It thus appears that the distinction

between the act of *declaring* war and the act of *making* or *prosecuting* a war once declared, was distinctly in the minds of the members of the Constitutional Convention. The final draft of the Constitution authorized Congress to *declare* war, and, in effect, charged the President with its *prosecution*.

The power to conduct a war is divisible into the power to provide the man power and other resources, and the power to direct their use. Thus the Constitution gives Congress only powers "to lay and collect taxes * * * to * * * provide for the common defence," "to raise and support armies," "to provide and maintain a Navy," "to make rules for the government and regulation of the land and naval forces," "to provide for calling forth the militia to execute the laws of the Union," "to provide for organizing, arming and disciplining the militia," and to pass all laws "necessary or proper" to enable the President to make war.

The above power "to make rules for the government and regulation of the land and naval forces" does not include the power to direct their operation for the reason that this latter power, although contained in the Articles of Confederation (as quoted above) was omitted from the Constitution.

Consistently with these powers, which are conferred upon Congress, the President is made Commander-in-Chief of the Army and Navy, and is vested with all power of an executive nature. Thus Congress is given the power to provide the resources for the conduct of a war, while the President is given power to direct the use of such resources.

The power to prosecute war, thus given to the President, does not mean merely using the man power of the nation, but includes the use of every resource, material as well as human, which is deemed necessary to win the war.

The war powers conferred by the Constitution upon Congress are express and specific. On the other hand, the war power which is conferred by the Constitution upon the President is in the most general language, thus giving evidence of the purpose of the Constitution to confer on the President all war powers not specifically granted to Congress. Certainly the power to prosecute a war, in so far as such prosecution is executive in character, belongs to the President under the Constitution, and neither Congress nor the President could surrender that power to the governors or other agencies of the several states. Certainly Congress could not have authorized the governors of the several states to designate the precise localities to which the soldiers from that state should be sent, and what could not be done respecting man power may not be done respecting the other resources for winning the war.

By the Joint Resolution in question, Congress authorized the President to take possession and assume control of the telegraph lines, and to operate the same for the duration of the war. The power was to be exercised whenever the President should deem it necessary for the national security or defense. The purpose and effect of this Joint Resolution was to provide the President with certain resources for the successful prosecution of the war. This was clearly a legislative act and properly pertained to Congress. Having provided the President with

these particular resources, the control and operation of the lines belong to the President, not merely under the terms of the Joint Resolution, but by reason of the fact that such control and operation involve the exercise of the power to conduct the war. Hence, the power to control and operate the telegraph lines, given into the possession of the President by the Act of Congress, belong to the President *under the Constitution*, and not merely under the Act of Congress. It follows that his control and operation cannot be made subordinate to the will of any State.

2. We shall now attempt to point out that Congress made no attempt to confer such a power on the States. This brings us to consider the language of the proviso. The proviso says, in effect, that nothing in the act shall be construed to impair or affect *the lawful police regulations of the several States.* It is contended by the other side that the intent of this proviso was to reserve to the States the power to enact any legislation with respect to the telegraph lines which might be justified by the *police power* which is reserved to the States under the Constitution. The term "police power" has two distinct meanings. In *Sligh* v. *Kirkwood,* 237 U. S. 59, this court said that

> "The police power, in its broadest sense, includes all legislation and almost every function of civil government."

On the other hand, it is equally clear that the expression is properly used in a narrower sense, as referring to measures for the protection of the lives, safety, health and morals of the community. This

narrower meaning has been said by this court to be "the ordinary accepted sense" of the expression. (*Manigault* v. *Springs*, 199 U. S. 473.) The correctness of the narrower definition has frequently been recognized by this court, as well as by other authorities.

Manigault v. *Springs*, 199 U. S. 473, 481.
Freund on Police Powers, §10.
Hawthorne v. *People*, 109 Ill. 303, 311.
Railroad Co. v. *Willemburg*, 117 Ill. 203, 208.

In its broader sense, the expression "police powers" undoubtedly includes the rate-making power. In its narrower sense, the rate-making power is not included. This fact, as well as the recognition of the fact that the expression has two distinct meanings, will appear from numerous decisions of this and other courts. For example, this court has frequently held that the police power of a State (using the expression in its narrow sense) cannot be bargained away.

Stone v. *Mississippi*, 101 U. S. 814-817.
Northern Pacific Ry. v. *Duluth*, 208 U. S. 583, 597.

Other cases in this court held that the rate-making power may be bargained away.

Home Telephone Co. v. *Los Angeles*, 211 U. S. 273.
Detroit Rate Case, 242 U. S. 238.

Undoubtedly, the rate-making power is a part of the police power in the broader sense. In the narrower sense, however, the rate-making power is not a part of the police power; otherwise, the

Detroit and *Los Angeles Rate Cases* would be grossly inconsistent with *Stone* v. *Mississippi, supra.* In order to reconcile the two cases last cited with the two cases previously cited, it is necessary not only to recognize that the expression in question is used in two distinct senses, but that the rate-making power, although a part of the police power in its broader sense, is no part of the police power in its narrower sense.

Again, while States admittedly have the power to fix public utility rates, it is elementary that, under the guise of rate regulations, the States may not confiscate the property of public utility corporations. Decisions on this point would be superfluous. Consistently with this principle, however, property may be confiscated by the States under the police power in its narrower sense.

> Cooley's Constitutional Limitations, 6th Ed., 716, 739, 741.
>
> *Crane* v. *Campbell,* 245 U. S. 304.

Illustrations of the latter principle will readily occur to the court. The destruction of property to prevent the spread of fire or contagious diseases, and the prohibition of the manufacture of intoxicating liquors, with the practical result of confiscating manufacturing establishments erected for that purpose, are perhaps the most obvious examples. These judicial authorities can only be reconciled by recognizing the fact that the expression is used in two distinct senses, and that the rate-making power, while constituting a branch of the police power in the broader sense, is no part whatever of the police power in the narrower sense.

The same principle is illustrated by the many cases which hold that municipalities, although vested with police powers in the narrow sense, are not authorized to fix public utility rates, unless specifically authorized by the legislature.

Trust Co. v. *Atlanta*, 83 Fed. 39.
Mills v. *Chicago*, 127 Fed. 731-734.
York Water Co. v. *York*, 250 Pa. 115.
St. Louis v. *Telephone Co.*, 96 Mo. 623.
Minneapolis Co. v. *Minneapolis*, 194 Fed. 215.
City of Kalamazoo v. *Judge*, 200 Mich. 146.
Cumberland Telephone Co. v. *Memphis*, 200 Fed. 657 .
Iowa Telephone Co. v. *Keokuk*, 226 Fed. 82.

In the cases above cited, municipalities were granted the authority to pass police ordinances, either in express terms or by words of general description. Under this authority such municipalities attempted to fix rates for public utility corporations. It was held that in the absence of an express statute authorizing such municipalities to fix rates, the power did not exist.

The authorities referred to sufficiently disclose that the expression "police power" is correctly used in the two distinct senses referred to. Assuming this to be true, we may now approach the interpretation of the proviso. In the first place, it is to be noted that the proviso does not preserve the *police powers* of the states (as it expressly does preserve the taxing powers of the states), but merely seeks to preserve unimpaired "the lawful *police regulations* of the several states." While the expression "*police*

powers" is frequently and properly used in the broad sense heretofore defined, a *"police regulation"* is generally understood as a measure adopted under the police power in its narrower sense; that is, a measure for the protection of the lives, safety, health or morals of the community. (*New Orleans Gas Co.* v. *Light Co.*, 115 U. S. 650,666.) Thus, laws providing for the establishment of schools, universities, libraries, parks, cemeteries or charities, laws for the descent of property, homestead laws, laws providing for guardianships and receiverships, and laws providing for the construction and maintenance of public roads, are all enacted under the police powers of the state, in its broades sense. It would seem singular, however, to hear such laws referred to as police regulations. No one would classify as a police regulation, a law providing for a public library or establishing a state university. Obviously this latter expression is better adapted to describe measures enacted under the police power in its narrower sense. In this sense, as we have already seen, a law fixing public utility rates is not a police regulation.

Disregarding for the moment the technical language, and looking more broadly to the spirit and policy of the act in question, the intent of Congress becomes more manifest. The act was passed, not pursuant to the interstate commerce clause of the constitution, but under the war powers of Congress. Even under its interstate commerce powers, Congress might have provided that interstate telegraph rates should be fixed by federal action. (*Minnesota Rate Cases*, 230 U. S. 352.) So long, however, as federal control of rates was predicated upon the in-

terstate commerce powers of Congress, there was reason to hold (as was held in the *Minnesota Rate Cases*), that the inaction of Congress left the states free, for the time being, to establish intrastate rates. Here, however, Congress has acted, not by virtue of its interstate commerce powers, but by virtue of its war powers. While interstate commerce laws are obviously enacted in recognition of state boundaries, laws passed by Congress under its war powers may be assumed to have been enacted in utter disregard of state boundaries. Under the joint resolution in question, the power of the federal government to exercise control of the telegraph lines has no more relationship to state boundary lines than has the power of the federal government to operate the mails of the United States. And where telegraph lines are operated by the federal government under the war power, there is no more reason for states to prescribe intrastate telegraph rates than there is for states to prescribe intrastate mail rates.

3. The interpretation given by the other side to the proviso in question would substantially tend to defeat the purpose of Congress in the enactment of the Joint Resolution. The purpose was undoubtedly to promote the operating efficiency of the telephone and telegraph lines, to the end that such lines might be more serviceable to the government in its task of prosecuting and winning the war. This purpose was to be effected by the consolidation of several separate organizations into one system, which was to be controlled and operated by the federal government. This unity of control and operation is obviously inconsistent with the idea of having the unified

system subjected to the rate-making control of forty-eight separate states, not to mention innumerable municipalities, which are vested by law with rate-making powers. In this connection it is to be borne in mind that at the time the Joint Resolution in question was passed, the United States, engaged in the gigantic task of prosecuting the war, was in need, not only of telephone and telegraph service, but was perhaps more urgently in need of revenue for war purposes. Unprecedented taxes were being levied, and unprecedented bond issues were being authorized. Certainly, Congress cannot have intended to handicap the government by providing that the telephone and telegraph lines should be taken over and operated by the government at a loss. That Congress had no such intention is further manifest from the fact that it made no appropriation with which to pay any such loss. What Congress obviously intended was that the president should pay operating expenses from operating revenue. Congress must have known that operating expenses were almost daily increasing. It must have been obvious to Congress that increased rates might become necessary in order to meet increased operating expenses. How long the war would last, and how much operating expenses might increase during the period of the war, Congress had no means of knowing. It must be assumed that Congress intended to give to the president the power to increase rates commensurate with the increase of operating expenses. It must have been obvious to Congres that in order to meet increased operating expenses, intrastate rates, no less than interstate rates, would have to be increased. In order to make these necessary increases in rates,

did Congress intend to compel the president to petition the various states, and to accept their final judgment as to whether the requested rate increases were necessary? In the many states where municipalities have been delegated with power to fix rates, did Congress intend that the president should be compelled to apply to innumerable municipalities in order to obtain necessary rate increases? Irrespective of any desire on the part of the federal government to increase rates, did Congress intend that federal control should be handicapped by the rate-making power of forty-eight states, not to mention innumerable municipalities to which the rate-making power has been delegated? To answer these questions in the affirmative is to impute to Congress an intent to destroy the very unity of control which Congress sought to create. To have left the rate-making power in the various states and municipalities might have resulted in almost inextricable confusion. Such power, if exercised by the various states and municipalities, would have been subject to the constitutional principle that such rates must not be confiscatory. What rates would be deemed confiscatory as applied to the United States as operating lessee might present extremely difficult questions, both of law and fact. Congress certainly could not have intended that the president, in the midst of war, should be called upon to litigate with various states and municipalities concerning the confiscatory character of rates fixed by such states and municipalities. The loss of energy, and inefficiency of a system subjected to these difficulties is obvious to everyone, and must have been obvious to Congress. The purpose of the Joint Resolution was to increase

operating efficiency, and to unify control. The Act of Congress should be construed to effect this purpose.

4. Even assuming that the proviso uses the expression "police regulations" as equivalent to the police power in its broadest sense, the states are without power to establish intrastate rates. Even in its broadest sense, the police power of the states is subject to the limitation that laws passed pursuant thereto must not conflict with the paramount power of the federal government. To the extent that state police laws do so conflict, they are unlawful, although, except for such conflict, they would be entirely lawful. Hence, the proviso merely reserves to the states the power to enact *lawful* police regulations. What was intended by the word "lawful" in this context? Its significance, we think, will appear from the many decisions of this court relative to the validity of state police regulations which have been claimed to constitute unlawful interferences with the power of Congress to regulate interstate commerce. Where the validity of such police regulations has been called in question, this court has invariably held that in the absence of any regulation by Congress, a state police regulation which is local in its application, and which only indirectly and incidentally affects interstate commerce, will not be regarded as an interference with the power of Congress.

Savage v. *Jones*, 225 U. S. 525.

Examples are state quarantine and inspection laws; state laws requiring locomotive engineers to submit to examination and to procure licenses (*Smith* v. *Alabama*, 124 U. S. 465); requiring loco-

motive engineers to pass examinations for color blindness (*Nashville R. R.* v. *Alabama,* 128 U. S. 96); requiring cars to be heated (*N. Y., N. H., etc., R. R.* v. *New York,* 165 U. S. 628); requiring cars to be fumigated (*South Covington R. R.* v. *City,* 235 U. S. 537), and requiring the prompt delivery of telegraph messages (*W. U. T. Co.* v. *James,* 162 U. S. 650). Where Congress passes laws under the interstate commerce clause of the Constitution, it would be superfluous for such laws to expressly reserve to the states the power to enact lawful police regulations. This reservation is written into all such Acts of Congress by the decisions of this court. In the passage of the present act, which was an exercise of the war power (the limitations of which were little understood), Congress, doubtless out of an abundance of precaution, inserted the proviso in question reserving such power to the states. In any event it is obvious that the "lawful police regulations" sanctioned by the proviso are those which are primarily of a local character, and which only indirectly and incidentally affect the war power of Congress. The question, then, resolves itself to this: Is a state statute fixing intrastate telegraph rates, a regulation which only indirectly and incidentally affects the war power of Congress?

In the solution of this question, it becomes important to emphasize the distinction between the interstate commerce power and the war power. Under the interstate commerce clause of the constitution, the power of Congress to fix rates is limited in the first instance to interstate rates, and Congress has

no power to fix intrastate rates unless it becomes necessary in order to effectually maintain the control of Congress over interstate rates. (*Minnesota Rate Cases,* 230 U. S. 352.) On the other hand, when the United States takes possession of the telegraph lines under the war power, it has the constitutional power to fix intrastate rates equally with interstate rates. This is true to exactly the same extent that Congress has the power to fix intrastate mail rates as well as interstate mail rates.

We have, then, this situation: Congress has taken control of the telegraph lines and incident thereto has constitutional power to fix all rates—intrastate and interstate. The act under which control was taken, reserves to the states the power to enact *lawful* police regulations. And the question is whether a law fixing intrastate rates is a lawful police regulation, in other words, whether it materially affects the efficiency of this war power.

Now it is elementary that even where Congress has taken no steps to establish interstate rates, a state law fixing interstate rates is invalid as constituting a direct interference with the power of Congress to regulate interstate rates. This is elementary. The principle here established is that where the power to fix particular rates pertains to Congress, any state law which attempts to fix such rates is a direct interference with the power of Congress, and hence unlawful. This principle is applicable here. The federal government having taken control of the telegraph lines under the war power, and having the constitutional authority to fix all rates (interstate and intrastate), any state law which at-

tempts to fix such rates is a direct interference with the power of Congress. Such a state law (exactly as a state law which attempts to fix interstate rates) undertakes to fix rates the establishment of which constitutionally pertains to Congress. Such a law has more than an indirect and incidental effect upon the power of Congress. It constitutes a direct interference in a most vital and important particular. Hence, within the meaning of the proviso, such a law is not a *lawful* police regulation, but rather falls within that established category of regulations which have uniformly been held unlawful because directly interfering with the constitutional powers of Congress.

5. The meaning of the proviso which reserves to the states the power to enact lawful police regulations is completely clarified by the history of the proviso. On August 29, 1916, the President approved the Act of Congress authorizing the President to take possession and control of the railroads of the United States. On December 26, 1917, the President issued a proclamation taking possession, control and operation of the railroads. (S. Doc. No. 159.) The proclamation directed that railroad rates should remain as fixed by the Interstate Commerce Commission and the various state commissions, subject, however, to the "paramount authority" of the Director General. On January 1, 1918, the government control became effective. On March 21, 1918, Congress passed the "Railroad Act." Section 10 authorized the President, in cooperation with the Interstate Commerce Commission, to establish rates. Section 15 was as follows:

"Sec. 15. That nothing in this Act shall be

> construed to amend, repeal, impair, or affect the existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transportation of troops, war materials, Government supplies, or the issue of stocks and bonds."

On July 16, 1918 (some four months later), Congress passed the Telephone and Telegraph Act. The proviso which was added to the Telephone and Telegraph Act was obviously taken from Section 15 of the Railroad Act. In both Acts Congress reserved to the states the power to enact "lawful police regulations." This expression must have been intended to have the identical meaning in both Acts. In the Railroad Act the power to enact lawful police regulations did not include the power to establish intrastate rates, because Section 10 of the Railroad Act expressly conferred that power upon the President.

It follows that the proviso to the Act in question, which reserved to the states the power to enact lawful police regulations, was not intended to confer the power to establish intrastate rates.

The decree of the lower court should be reversed.

Respectfully submitted,

HENRY S. ROBBINS,
For Appellant.

ALEXANDER C. KING,
Solicitor General
of the United States,
of Counsel.

APPENDIX.

An Act to provide for the regulation of public utilities, passed by the Illinois Legislature and approved June 30, 1913.

"Sec. 8. The commission shall have general supervision of all public utilities, shall inquire into the management of the business thereof and shall keep itself informed as to the manner and method in which the business is conducted. It shall examine such public utilities and keep informed as to their general condition, their franchises, capitalization, rates and other charges, and the manner in which their plants, equipments and other property owned, leased, controlled or operated are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service but also with respect to their compliance with the provisions of this Act and any other law, with the orders of the commission and with the charter and franchise requirements. * * *

Sec. 9. Every public utility shall furnish to the commission all information required by it to carry into effect the provisions of this Act, and shall make specific answers to all questions submitted by the commission. * * *

Sec. 10. The term 'public utility,' when used in this Act, means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever (except, however, such public utilities as are or may hereafter be owned or operated by any municipality) that now or hereafter:

(a) May own, control, operate or manage, within the state, directly or indirectly for public use, any plant, equipment or property used or to be used for or in connection with the transportation of persons or property or the transmission of telegraph or telephone messages between points within this state; or for the production, storage, transmission, sale, delivery or furnishing of heat, cold, light, power, electricity or water; or for the conveyance of oil or gas by pipe line; or for the storage or warehousing of goods; or for the conduct of the business of a wharfinger; or that

(b) May own or control any franchise, license, permit or right to engage in any such business.

* * *

Sec. 11. The commission shall have power to establish a uniform system of accounts to be kept by public utilities or to classify public utilities and to establish a uniform system of accounts for each class, and to prescribe the manner in which such accounts shall be kept. It may also, in its discretion, prescribe the forms of accounts to be kept by public utilities, including records of service, as well as accounts of earnings and expenses, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this Act. * * *

Where the commission has prescribed the forms of accounts to be kept by any public utility for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts for such business other than those prescribed or approved by the commission, or those prescribed by or under the authority of any other state or of the United States. * * *

Sec. 16. Each public utility shall have an office in one of the cities, villages or incorporated towns in this state in which its property or some part thereof is located, and shall keep in said office all such books, accounts, papers, records and memoranda as shall be ordered by

the commission to be kept within the state. The address of such office shall be filed with the commission. No books, accounts, papers, records, or memoranda ordered by the commission to be kept within the state shall be at any time removed from the state, except upon such conditions as may be prescribed by the commission.

Sec. 19. Each public utility in the state shall each year after the year 1913, furnish to the commission, in such form as the commission shall require, annual reports as to all the items mentioned in the preceding sections of this article, and in addition such other items, whether of a nature similar to those therein enumerated or otherwise, as the commission may prescribe. * * *

Sec. 33. Every public utility shall file with the commission and shall print and keep open to public inspection schedules showing all rates and other charges, and classifications, which are in force at the time for any product or commodity furnished or to be furnished by it, or for any service performed by it, or for any service in connection therewith, or performed by any public utility controlled or operated by it. * * *

Every public utility shall file with the commission copies of all contracts, agreements or arrangements with other public utilities, in relation to any service, product or commodity affected by the provisions of this Act, to which it may be a party, and copies of all other contracts, agreements or arrangements with any other person or corporation affecting in the judgment of the commission the cost to such public utility of any service, product or commodity.

Sec. 36. Unless the commission otherwise orders, no change shall be made by any public utility in any rate or other charge or classification, or in any rule, regulation, practice or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, except after 30 days' notice to the commission and to the public as herein provided.

Such notice shall be given by filing with the commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. The commission, for good cause shown, may allow changes without requiring the 30 days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. When any change is proposed in any rate or other charge, or classification, or in any rule, regulation, practice, or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, such proposed changes shall be plainly indicated on the new schedule filed with the commission, by some character to be designated by the commission, immediately preceding or following the item.

No public utility shall increase any rate or other charge, or so alter any classification, contract, practice, rule or regulation as to result in any increase in any rate or other charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified.

Whenever there shall be filed with the commission any schedule stating an individual or joint rate or other charge, classification, contract, practice, rule or regulation, the commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate or other charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision thereon, such rate or other charge, classification, contract, practice, rule or

regulation shall not go into effect: *Provided,* that the period of suspension of such rate or other charge, classification, contract, practice, rule or regulation shall not extend more than 120 days beyond the time when such rate or other charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the commission, in its discretion, extends the period of suspension for a further period not exceeding six months. On such hearing the commission shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof which it shall find to be just and reasonable. All such rates or other charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the expiration of thirty days from the time of filing the same with the commission, or of such lesser time as the commission may grant, go into effect and be the established and effective rates or other charges, classifications, contracts, practices, rules and regulations, subject to the power of the commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same. * * *

Sec. 41. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges, or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, contracts, or practices, or any of them, affecting such rates or other charges, or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provision of law, or that such rates or other charges, or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates or other charges, classifica-

tions, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided. * * *

Sec. 49. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed and shall fix the same by its order, decision, rule or regulation. The commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility.

Sec. 50. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employes or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes to be made or such structure or structures be erected in the manner and within the time specified in said order. * * *

Sec. 54. The commission shall have power to ascertain, determine and fix for each kind of public utility suitable and convenient standard

commercial units of service, product or commodity, which units shall be lawful units for the purposes of this Act; to ascertain, determine and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the performing of its service or to the furnishing of its product or commodity by any public utility, and to prescribe reasonable regulations for examining, measuring and testing such service, product or commodity, and to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for examining, measuring, or testing such service, product or commodity. The commission may purchase such materials, apparatus and standard measuring instruments as it deems necessary to carry out the provisions of this section. * * *

Sec. 57. The commission shall have power, after a hearing and upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every public utility to maintain and operate its plant, equipment or other property in such manner as to promote and safeguard the health and safety of its employes, passengers, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signalling, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employes, passengers, customers or the public may demand. * * *

Sec. 64. Complaint may be made by the commission, of its own motion or by any person or corporation, chamber of commerce, board of trade, or any industrial, commercial, mercantile, agricultural or manufacturing society, or any

body politic or municipal corporation by petition or complaint in writing, setting forth any act or thing done or omitted to be done in violation, or claimed to be in violation, of any provision of this Act, or of any order or rule of the commission. * * *

Sec. 68. Within thirty days after the service of any order or decision of the commission made after a final hearing, or within thirty days after a hearing or refusal of a hearing upon any rule, regulation, order or decision which the commission is authorized to issue without a hearing and has so issued, any person or corporation affected by such rule, regulation, order or decision may appeal to the Circuit Court of Sangamon County, for the purpose of having the reasonableness or lawfulness of the rule, regulation, order or decision inquired into and determined: *Provided*, that no proceeding to contest any rule, regulation, decision or order which the commission is authorized to issue without a hearing and has so issued, shall be brought in any court unless application shall have been first made to the commission for a hearing thereon and until after such application has been acted upon by the commission, nor shall any person or corporation in any court urge or rely upon any grounds not set forth in such application for a hearing before the commission: *And, provided*, the commission shall decide the questions presented by said application with all possible expedition consistent with the duties of the commission. The party taking such an appeal shall file with the secretary of the commission, at its office in Springfield, Illinois, written notice of said appeal. The commission, upon the filing of such notice of appeal, shall, within five days thereafter, file with the clerk of said Circuit Court of Sangamon County a certified copy of the order appealed from and within ten days thereafter the record provided for in Section 64. * * *

Sec. 75. Whenever the commission shall be

of the opinion that any public utility is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, regulation, direction or requirement of the commission, issued or made under authority of this Act, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order, decision, rule, regulation, direction or requirement of the commission, issued or made under authority of this Act, it shall direct the counsel for the commission to commence an action or proceeding in the Circuit Court, or in any other court of concurrent jurisdiction, in and for the county in which the case or some part thereof arose, or in which the person or corporations complained of, if any, has its principal place of business, or in which the person complained of, if any, resides, in the name of the people of the State of Illinois, for the purpose of having such violations or threatened violations stopped and prevented, either by *mandamus* or injunction. Counsel for the commission shall thereupon begin such action or proceeding by petition to such Circuit Court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of *mandamus* or injuncton. * * *

Sec. 76. Any public utility or any corporation other than a public utility, which violates or fails to comply with any provisions of this Act, or which fails to obey, observe or comply with any order, decision, rule, regulation, direction or requirement or any part or provision thereof, of the commission, made or issued under authority of this Act, in a case in which a penalty is not otherwise provided for in this Act, upon conviction, shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars for each and every offense. * * *

Sec. 77. Every person, who, either individ-

ually, or acting as an officer, agent or employe of a public utility or of a corporation other than a public utility, violates or fails to comply with any provisions of this Act, or fails to observe, obey or comply with any order, decision, rule, regulation, direction or requirement, or any part or portion thereof, of the commission, made or issued under authority of this Act, or who procures, aids or abets any public utility in its violation of this Act or in its failure to obey, observe or comply with this Act or any such order, decision, rule, regulation, direction or requirement, or any part or portion thereof, in a case in which a penalty is not otherwise provided for in this Act, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

NO. 1006

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1918.

ALBERT S. BURLESON, Postmaster General, (*Plaintiff*), *Appellant.*

vs.

THOMAS E. DEMPCY, WALTER A. SHAW, PATRICK J. LUCEY, JAMES H. WILKERSON, and FRANK H. FUNK, constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, EDWARD J. BRUNDAGE, Attorney General of the State of Illinois, (*Defendants*), *Appellees.*

Appeal from the United States District Court of Illinois, for the Northern District of Illinois.

Honorable
K. M. Landis,
Judge Presiding.

BRIEF

on behalf of Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, appellees, on appeal from the final decree dismissing complainant's bill of complaint and enjoining complainant in accordance with the prayer of appellees' answer.

EDWARD J. BRUNDAGE,
Attorney General,
ATTORNEY FOR APPELLEES.

GEORGE T. BUCKINGHAM,
MATTHEW MILLS,
RAYMOND S. PRUITT,
Assistant Attorneys General,
Of Counsel.

HAWKINS & LOOMIS CO., LAW PRINTERS, 162 W. MONROE ST., CHICAGO.

INDEX.

TABLE OF CASES.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1918.

ALBERT S. BURLESON, Postmaster General,
(Plaintiff), Appellant.

vs.

THOMAS E. DEMPCY, WALTER A. SHAW, PATRICK J. LUCEY, JAMES H. WILKERSON, and FRANK H. FUNK, constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, EDWARD J. BRUNDAGE, Attorney General of the State of Illinois,
(Defendants), Appellees.

Appeal from the United States District Court of Illinois, for the Northern District of Illinois.

Honorable K. M. Landis, Judge Presiding.

BRIEF

on behalf of Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, appellees, on appeal from the final decree dismissing complainant's bill of complaint and enjoining complainant in accordance with the prayer of appellees' answer.

STATEMENT.

This appeal is from a final decree entered April 26, 1919, dismissing the plaintiff's bill of complaint for want of equity, and permanently enjoining and restraining the Postmaster General and each of his agents, deputies and employees, from charging, demanding, collecting or receiving, for the transmission of messages by telegraph between points lying

wholly within the State of Illinois, any rates other or different from the rates and tariffs applicable to the transmission of such messages as specified in the schedules filed with the Public Utilities Commission of Illinois and in force prior to the 29th day of March, 1919, and from charging, demanding, collecting or receiving, for the transmission of messages between points lying wholly within the State of Illinois, the increased rates therefor as authorized and ordered by the Postmaster General of the United States until such increased rates and charges shall be approved by the Public Utilities Commission of Illinois, said injunction being granted in accordance with the prayer of defendants' answer filed in said cause, praying for affirmative relief against the plaintiff.

This proceeding requires an interpretation of a resolution of the Congress of the United States adopted July 16, 1918, hereinafter referred to as the "Wire Resolution." Similar questions are involved in other cases now pending in this court arising out of various suits instituted by state authorities against the Postmaster General and different telephone and telegraph companies, having for their purpose, the enforcement of the provisions of the various state laws in many respects similar to the Public Utilities Act of Illinois. This case, however, differs from the other proceedings referred to in that it is the Postmaster General who, in this instance, first sought the aid and assistance of a court of equity to protect him in the exercise of the powers which he claims to possess and enjoy, and the Postmaster General by so doing, waived all question

as to the jurisdiction of the court to define and limit his authority, and there is, accordingly, presented here an unequivocal issue as to the proper construction of said Congressional Wire Resolution of July 16, 1918.

Circumstances Under Which This Litigation Arose.

To summarize briefly the facts out of which this litigation arose, the Congress of the United States, during the existence of an actual state of hostilities between the United States and the Imperial German Government, on July 16, 1918, adopted a joint resolution, vesting in the President certain powers to possess, operate and control all telegraph and telephone systems during the continuance of the war, said resolution being in words and figures as follows:

> "Joint resolution to authorize the President, in time of war, to supervise or take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems or any part thereof and to operate the same in such manner as may be needful or desirable for the duration of the war, and to provide compensation therefor.
>
> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President during the continuance of the present war is authorized and empowered, *whenever he shall deem it necessary* for the national security or defense, to supervise or to take possession and assume control of any telegraph, telephone, marine cable or radio system or systems, or any part thereof, and to operate the same in *such manner* as may *be needful* or *desirable*, for the duration of the war, which supervision, posses-

sion, control or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace; *provided*, that just compensation shall be made for such supervision, possession, control or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid 75 per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum, will make up such amount as will be just compensation therefor, in the manner provided for by Section 24, Paragraph 20, and Section 145 of the Judicial Code; *provided*, further, that nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems." (Italics ours.)

On July 22, 1918, the President, purporting to act pursuant to the power and authority vested in him by said resolution, issued the following proclamation:

"By the President of the United States of America.

A Proclaamtion.

Whereas, the Congress of the United States, in the exercise of the constitutional authority vested in them, by joint resolution of the Senate and House of Representatives, bearing date July 16, 1918, resolved:

That the President, during the continuance of the present war, is authorized and empowered,

whenever he shall deem it necessary for the national security or defense, to supervise or to take possession and assume control of any telegraph, telephone, marine cable or radio system or systems or any part thereof, and to operate the same in such manner as may be needful or desirable, for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: *Provided,* that just compensation shall be made for such supervision, possession, control or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid 75 per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum, will make up such amount as will be just compensation therefor, in the manner provided for by Section 24, Paragraph 20, and Section 145 of the Judicial Code: *Provided,* further, that nothing in this act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers or regulations may affect the transmission of Government communications or the issue of the stocks and bonds by such system or systems.

And whereas it is deemed necessary for the national security and defense to supervise and to take possession and assume control of all telegraph and telephone systems and to operate the same in such manner as may be needful or desirable;

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolution, and by virtue of all other powers thereto me enabling, do hereby take possession

and assume control and supervision of each and every telegraph and telephone system, and every part thereof, within the jurisdiction of the United States, including all equipment thereof and appurtenances thereto whatsoever and all materials and supplies.

It is hereby directed that the supervision, possession, control, and operation of such telegraph and telephone systems hereby by me undertaken shall be exercised by and through the Postmaster General, Albert S. Burleson.

In Witness Whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done by the President, in the District of Columbia, this 22d day of July, in the year of our Lord 1918, and of the independence of the United States the 143d.

(SEAL) WOODROW WILSON.

By the President:

FRANK L. POLK,

Acting Secretary of State."

Thereafter, pursuant to said proclamation, the President did, at 12 o'clock midnight, on July 31, 1918, take possession and assume control of every telegraph and telephone system in the United States, and proceeded, from that time thenceforth, to control and operate said systems through the Postmaster General, the plaintiff, Albert S. Burleson, who has not only taken charge of the physical properties of said telephone and telegraph companies and made contracts with them for compensation for the use of the same, but has also undertaken to supervise and control the acts and doings of their various officers and employees and to issue various orders to them at different times, through a committee of three individuals designated as the "Operating Board."

Provisions of the Illinois Public Utilities Commission Law.

At the time of the passage of said Wire Resolution of July 16, 1919, and the seizure of said telegraph and telephone systems by the President, and at all times subsequent thereto, there was, and is now, in full force and effect, in the State of Illinois, a certain Act of the Legislature entitled, "An Act to provide for the regulation of Public Utilities," in force January 1, 1914, said act being hereinafter referred to as the Public Utilities Commission Law. The individual defendants herein named are the members of said Public Utilities Commission of Illinois, vested by said law with the supervision, regulation and control of all public utilities doing business in said state, and the defendant, Attorney General, is the chief law officer of the State of Illinois, charged with the duty and responsibility of enforcing said law.

The said Public Utilities Commission Law provides, *inter alia*, that, "The term public utilities, when used in this Act, means, and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees or receivers appointed by any court whatsoever (except, however, such public utilities as are, or may hereafter be owned by any municipality) that now, or hereafter may own, control, operate or manage, within the state, directly or indirectly, for public use, any plant, equipment or property used, or to be used, for, or in connection with * * * the transmission of telegraph or telephone messages between points within this state."

Section 32 of said Act provides: "All rates and other charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished, or for any service rendered, or to be rendered, shall be just and reasonable." Sections 33 and 34 of said Act provide for the filing, publication and posting of schedules of rates to be established by public utilities prior to the date when same become effective. Section 35 of said Act provides: "No public utility shall undertake to perform any service, or to furnish any product or commodity unless, or until the rates and other charges and classifications, rules and regulations relating thereto applicable to such service, product or commodity, have been filed and published in accordance with the provisions of this Act." Section 36 provides: "Unless the Commission otherwise orders, no change shall be made by any public utility in any rate or other charge or classification, or in any rule, regulation, practice or contract relating to, or affecting any rate or other charge, classification or service, or in any privilege or facility, except after thirty days' notice to the Commission and to the public as herein provided. * * * No public utility shall increase any rate or other charge, or so alter any classification, contract, practice, rule or regulation as to result in any increase in any rate or other charge under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that said increase is justified."

Postmaster General Operated Telegraph Companies as Public Utilities.

The said Postmaster General of the United States, prior to the said April 1, 1919, acting under the provisions of said Wire Resolution and Proclamation of the President of the United States, had made certain contracts with the telegraph companies owning and operating telegraph systems in the State of Illinois, whereby he undertook to pay said companies certain rental or compensation for their property during the period when same should be so operated by the Postmaster General, and the Postmaster General thereby became the lessee of said public utilitiy properties, and as such lessee continued to transmit messages by telegraph between various points in the State of Illinois, and by force of the express provisions of said Illinois statute, the said Postmaster General, then and there, became a public utility, subject to all rules, regulations and restrictions imposed by the police regulations of the State of Illinois upon public utilities doing business in said state.

From July 31, 1918, the date of the seizure of said telegraph systems and properties by the Postmaster General, to April 1, 1919, the said Postmaster General continued to operate the properties controlled by him as aforesaid, and to transmit messages for the public, between points lying wholly within the State of Illinois, at the same rates legally established and charged therefor prior to the period of Government control. On March 29, 1919, the said Post-

master General undertook, however, to promulgate a certain order establishing a new and increased schedule of rates applicable to the transmission of domestic commercial telegrams between all points in the United States, including points lying wholly within the State of Illinois, said order providing that said new rates, which were approximately 20 per cent. in advance of the rates theretofore legally established and existing, should become effective April 1, 1919. Prior to issuing said order, the said Postmaster General did not file a schedule of the proposed new rates with the Public Utilities Commission of Illinois or give to the said Commission thirty days' notice of the date when said changes in rates were to become effective as required by Section 36 of said Act, but proceeded to institute and put into full force and effect the said increased charges for telegraphic service between all points in the United States, including service rendered within the State of Illinois, without giving to the Commission thirty days' notice of the date when such changes became effective, and without first obtaining the consent or approval of said Commission and a finding by said Commission that such increased charges were justified as required by the Statute.

Resolution Adopted by the Public Utilities Commission.

The attention of the Commission having been called to the said order of the Postmaster General instituting increased rates for telegraphic service, and to the fact that said rates had been put into full force and effect within the State of Illinois on the

first day of April, 1919, without authority of law, the said Commission, on April 4, 1919, adopted the certain resolution attached to defendants' answer and identified as "Exhibit A," whereby the said Commission instructed the Attorney General of Illinois to take such steps as he might deem necessary and appropriate to prevent the said increase in rates for said telegraphic service between points in the State of Illinois.

The Plaintiff's Bill of Complaint.

Prior, however, to the institution of any proceedings by the Attorney General, in compliance with said order, the plaintiff, Albert S. Burleson, on April 7, 1919, filed in the District Court of the United States, for the Northern District of Illinois, his bill of complaint against the defendants in this cause, seeking a permanent injunction restraining the defendants from interfering, directly, or indirectly, by suit or other prosecution, civil or criminal or in any manner whatsoever, with the plaintiff, or any of his agents or employees, in charging and collecting for telegraphic service and leased wire service, the rates prescribed by the plaintiff's said order of March 29, 1919. At the time of the filing of said bill of complaint, the court ordered the defendants to show cause, on the 14th day of April, 1919, why a temporary injunction should not issue, and pending the expiration of said rule, temporarily restrained the said defendants as prayed in said bill.

The bill of complaint sets out the necessary jurisdictional facts, the joint resolution of Congress of

sion thirty days' notice of the date when such changes became effective, and without affording to the said Commission or the Attorney General, charged with the responsibility of enforcing the said law, any opportunity to secure relief against such threatened violations of law by the institution of injunction or mandamus proceedings. Said answer further set out the provisions of Section 75 of the Illinois Public Utilities Commission Law which authorizes the said Commission, whenever it shall be of the opinion that any public utility is failing or omitting, or about to fail or omit, to do anything required of it by law, or by any order, decision, rule or requirement of the Commission, to direct the counsel for the Commission to commence an action or court proceeding in the name of the People of the State of Illinois for the purpose of preventing such violations or threatened violations of law, and said defendants prayed that they be granted the same relief by said answer as might have been obtained by an appropriate proceeding filed by them against said Postmaster General in accordance with the said provisions of Section 75 of said Illinois Public Utilities Commission Law.

The answer further charged that said new rates promulgated by the Postmaster General were greatly in excess of the rates theretofore existing, and increased the cost of telegraphic service to the citizens of Illinois by at least twenty per cent; that said increased rates were never found by said Public Utilities Commission of Illinois to be reasonable and just, but are, on the contrary, wholly arbitrary, unauthorized and unjustified, and have no tendency

whatsoever to facilitate the transmission of Government messages, or to assist the United States Government in the prosecution of the war with Germany, but are wholly subject to the lawful and existing police regulations of the State of Illinois; that defendants have no adequate remedy at law against plaintiff by reason of the multiplicity of suits which would be necessitated if an effort were made to enforce the provisions of said law by filing suits for penalties accrued for violations thereof, and defendants accordingly prayed that the said plaintiff, the Postmaster General, and his agents, servants and employes, be, upon preliminary application, temporarily enjoined and restrained, and by the final decree of the court, permanently enjoined and restrained from charging, demanding, collecting or receiving, for the transmission of telegraphic messages between points wholly within Illinois, any rates other or different from the rates and tariffs applicable to such service as specified in the schedules filed with said Public Utilities Commission, and in force prior to the 29th day of March, 1919, and from charging, demanding, collecting or receiving, for the transmission of messages between points lying wholly within the State of Illinois, the increased rates therefor as authorized and ordered by said Postmaster General of the United States until such increased rates or charges shall be approved by the Public Utilities Commission of Illinois.

Stipulation of Facts.

Thereafter, on April 21, 1919, prior to the final hearing in said cause, and for the purpose of avoiding the necessity of introducing any proof regarding the facts concerned in said proceedings, the parties thereto filed with the court two stipulations agreeing to all of the facts well pleaded in said bill of complaint and in defendants' answer thereto.

Final Decree.

The case was argued orally before Honorable Kenesaw M. Landis, district judge, on April 21, 1919, and on April 26, 1919, a final decree was entered, dismissing plaintiff's bill for want of equity, and permanently enjoining the plaintiff and each of his agents, deputies and employes from charging, demanding, collecting or receiving, for the transmission of messages by telegraph between points lying wholly within the State of Illinois, any rates other or different from the rates and tariffs applicable to the transmission of such messages as specified in the schedules theretofore filed with the Public Utilities Commission of Illinois, and in force prior to the 29th day of March, 1919, and from charging, demanding, collecting or receiving, for the transmission of messages between points lying wholly within the State of Illinois, the increased rates therefor as authorized and ordered by said Postmaster General of the United States, until said increased rates and charges shall be approved by the Public Utilities Commission of Illinois.

From said final decree, the plaintiff was allowed an appeal to the Supreme Court of the United States, the record being filed and the case docketed on April 28, 1919, and on the following day an order was entered upon motion of the defendants, advancing said case for oral argument on May 5, 1919, in order that it might be heard with the cases arising in other states involving the same questions and issues which are raised in this proceeding.

The Real Issue.

Although many questions of varying importance have been raised in this case and in other cases now before the courts, all involve one issue of paramount importance; that is to say, the right of the Postmaster General to promulgate and change rates for intrastate service during the period of Government control. It is claimed by the plaintiff, on the one hand, that the power to operate and control telegraph systems which Congress granted and conferred, necessarily includes the right to fix rates to be charged and collected during the period of Government control, and that Congress, by the language of the proviso, intended only to preserve to the states their necessary police powers incidental to the preservation and protection of the lives, health and safety of their citizens, and not their police powers to regulate the rates to be charged and collected by the Postmaster General for services rendered. It is claimed, on the other hand, by the defendants and by all other state authorities who have been concerned in such litigation, that whatever may have been the right of Congress, if it had so desired,

and had found it necessary as an incident to the war powers, to seize and operate public utility properties, to fix rates therefor, and to take any and all measures which might seem desirable or appropriate to marshal the resources of the country for war and bring same to a speedy conclusion, the Congress of the United States, in fact, by the said Wire Resolution, did not intend to take from the states their vested right to fix the rates to be charged, demanded, collected and received by the telegraph companies, but in express terms, reserved said rights to the several states by providing that nothing in said resolution contained should be so construed as to repeal, impair or affect the lawful police regulations of the states. All other issues raised in this case and in the other cases referred to, arise out of this one question, and are subordinate to it, and as we conceive that the Postmaster General, by submitting his rights and authority to a court of equity for protection, has submitted himself to the jurisdiction of the court and waived all jurisdictional questions, we shall confine our brief and argument largely to the meritorious question presented upon the record, and give only a secondary consideration to the collateral questions involved.

BRIEF.

A.

The Appeal of Albert S. Burleson, Postmaster General, From the Decree of the District Court was Properly Taken to the United States Supreme Court.

Section 238 (5) of the Judicial Code authorizes such appeals in any case in which the Constitution or law of a state is claimed to be in contravention of the Constitution of the United States.

The plaintiff, in his original bill of complaint (page 13), sets out the specific claim that if the Public Utilities Commision Law of Illinois be construed, as claimed by the defendants in this case, to require the Postmaster General to comply with said state statute and prescribe only such rates for intrastate service as said Utilities Commission shall approve, said state statute violates those provisions of the Constitution of the United States which confer on the Congress and President of the United States exclusive powers to declare and conduct war, and make all necessary and proper laws for carrying into execution said powers.

The decree of the District Court, dismissing plaintiff's bill for want of equity and granting an injunction to the defendants which, in effect, requires the Postmaser General to comply with said state statute and prescribe only such rates for intrastate tele-

graph service as the State Commission shall approve, is an express denial of plaintiff's asserted claim that the Illinois statute contravenes the Constitution of the United States, and the appeal was therefore properly taken and allowed to this court in accordance with Section 238 of the Judicial Code.

B.

A Court of Equity Has Jurisdiction Over the Plaintiff in This Proceeding, and May by Its Injunction Restrain Such Plaintiff From an Illegal or Unauthorized Act, Notwithstanding the Fact That He Claims to Act as Agent or Officer of the United States Government.

I. THE COURTS MAY RESTRAIN ANY OFFICER, FEDERAL OR STATE, INCLUDING MEMBERS OF THE PRESIDENT'S CABINET, FROM AN ILLEGAL USE OF THEIR AUTHORITY AS AGENTS OF THE UNITED STATES GOVERNMENT.

American School of Magnetic Healing v. *McAnnulty*, 187 U. S. 94, 109, 110.

Philadelphia Co. v. *Stimson*, 223 U. S. 605, 619, 620.

Noble v. *Union River Logging R. R.*, 147 U. S. 165, 171, 172.

2 High on Injunctions, 4th Ed., 1322.

1 Joyce on Injunctions, 1909 Ed., Sec. 54.

State v. *Dakota Central Telephone Co.*, 171 N. W. (advance sheets) 277, 279.

a. Where the suit rests upon a charge of abuse of power by the Federal officer, he cannot claim immunity from injunction process.

Philadelphia Co. v. *Stimson, supra*, at p. 620.

(1) The courts have jurisdiction to determine whether the acts of a cabinet officer are within the powers conferred upon him by Congress, and will enjoin an illegal act in excess of his official authority.

St. Louis Independent Packing Co. v. *Houston,* 242 Fed. 337, 343.

Lewis Pub. Co. v. *Wyman,* 152 Fed. 787, 791.

(2) If the Federal officer is without power to do the *ultra vires* act, he is as much subject to an injunction as he would be to a mandamus if he refused to do an act which the law plainly required him to do.

Noble v. *Union River Logging Co.,* 147 U. S. 165, 171-2.

Garfield v. *Goldsy,* 211 U. S. 249, 261.

b. Such suit will not abate, because the act and possession of plaintiff is claimed to be the act and possession of the United States, and the suit is in effect a suit against the United States.

United States v. *Lee,* 106 U. S. 196, 204-219.

Osborn v. *Bank of United States,* 9 Wheat. 738, 842.

c. Such suit will not abate because the effect of the court's order may be to deprive the plaintiff of property claimed by the United States.

United States v. *Lee, supra.*

State of Georgia v. *Atkins, Collector,* 35 Ga. 315, 316-318.

d. The claim that plaintiff acts under authority

of the President of the United States does not confer immunity from suit, but the courts retain jurisdiction to inquire judicially into the question as to whether the authority set up actually exists.

United States v. *Lee, supra,* pages 219-221.
Griffin v. *Wilcox,* 21 Ind. 370, 386.

e. The order of the President of the United States, even in time of war, cannot legalize an act, which without such order would be a trespass.

Little v. *Barreme,* 6 U. S. 170, 179.
Eifort v. *Bevins,* 64 Ky. 460, 461.

f. Suits against state officers are not suits against the states, and a court of equity may restrain a state officer from executing an unconstitutional statute, as well as from an abuse of his authority under a valid law.

Ex parte Young, 209 U. S. 123, 150, 155.
Greene v. *Louis & Interurban R. R. Co.,* 244 U. S. 499, 506-507.
Reagan v. *Farmers Loan & Trust Co.,* 154 U. S. 362, 390.
Truax v. *Raich,* 239 U. S. 33, 37.

g. Even the governor of a state may be enjoined from executing a void or unconstitutional law.

Davis v. *Gray,* 83 U. S. 203.

h. It is not by the officer to whom the writ is directed, but the nature of the thing to be done that the propriety of judicial interference is to be determined.

Marbury v. *Madison,* 5 U. S. (1 Cranch) 137, 166-171.

II. THE POSTMASTER GENERAL IS THE MOVING PARTY IN THIS LITIGATION, AND BY APPLYING TO THE DISTRICT COURT FOR A CONSTRUCTION OF HIS POWERS AND THE POWERS OF DEFENDANTS OVER INTRASTATE TELEGRAPH RATES, HE SUBMITTED HIMSELF TO THE JURISDICTION AND PROTECTION OF THE COURT, AND WAIVED HIS ASSERTED IMMUNITY FROM SUIT.

a. It is a fundamental rule of equity, that he who seeks equity, must offer equity, and do equity.

Peoples National Bank v. *Marye,* 191 U. S. 272, 283.

16 Cyc. 140.

Bispham's Principles of Equity, 1915 Ed., page 73.

b. This maxim applies to the United States as well as to individuals, and it has been repeatedly held that where the United States voluntarily submits itself to the jurisdiction of a court by instituting a civil action therein, it may be subjected to equitable proceedings of a summary character with reference to the subject-matter of such suit.

39 Cyc. 776.

United States v. *American Surety Co. of N. Y.,* 110 Fed. 913, 914.

The Siren, 74 U. S. (7 Wall) 152, 154.

United States v. *Ringgold,* 33 U. S. (8 Peters) 150, 163.

c. Upon the same principle, it follows that in this proceeding, the court may determine and define the extent of the Postmaster General's powers under the Wire Resolution, without reference to collateral

questions involving the respective jurisdiction of State and Federal Courts, or other subordinate questions which have been raised in other cases to confuse the real issue which must here be met and decided upon its merits, and not avoided or disregarded upon jurisdictional grounds.

C.

Congress by the Express Proviso Contained in the Resolution of July 16, 1918, in Effect Specifically Ordered That the Powers Thereby Conferred Upon the President Shall Not Be Construed to Amend, Repeal, Impair or Affect the Existing Police Regulations of the States Relative to Intrastate Commerce, Including the Fixing of Reasonable Intrastate Rates to Be Charged and Collected by Telephone Companies.

I. THE FIXING OF PUBLIC UTILITY RATES IS AN EXERCISE OF POLICE POWER, AND AN ACT OF THE LEGISLATURE OR AN ORDER OF THE PUBLIC UTILITIES COMMISSION PRESCRIBING THE REASONABLE RATES TO BE CHARGED BY A PUBLIC UTILITY IS A POLICE REGULATION.

a. The Illinois Public Utilities Commission Law is a police regulation enacted by the Legislature in the exercise of its police power, and has been held constitutional by the Supreme Court of Illinois.

City of Chicago v. *O'Connell*, 278 Ill. 591, 603, 607.

b. The Illinois courts have uniformly sustained the right of the Legislature, either acting directly or through a commission, to prescribe reasonable

intrastate rates to be charged and collected by the public utilities, and have held that this right of the Legislature is *police power* which cannot be contracted away.

City of Chicago v. *O'Connell, supra,* at 607.

Rogers Park Water Co. v. *Fergus,* 178 Ill. 571.

City of Danville v. *Danville Water Co.,* 178 Ill. 299.

Freeport Water Co. v. *City of Freeport,* 186 Ill. 179.

c. Other courts, both State and Federal, agree that laws fixing reasonable intrastate rates to be charged and collected by public utilities are *police regulations.*

Munn v. *Illinois,* 94 U. S. 113, 124-125.

Woodburn v. *Public Service Com.,* Ann. cases, 1917 E. 996; 82 Ore. 114; 161 Pac. 391.

Budd v. *New York,* 143 U. S. 517, 534-537.

Arkansas Rate Cases, 187 Fed. 290. 297-300.

Home Tel. & Tel. Co. v. *Los Angeles,* 155 Fed. 554, 570, affirmed in 211 U. S. 265.

Yeatman v. *Towers,* 126 Maryland, 513; 95 Atl. 158, 159.

State ex rel Webster v. *Superior Court,* 67 Wash. 37; 120 Pac. 861; L. R. A. 1915C 287, 299.

Union Dry Goods Co. v. *Georgia Public Service Corporation,* decided March 24, 1919, United States Supreme Court, Advance Opinion, No. 6, page 116.

(1) The police powers of the states were expressly defined by the Supreme Court of the United States in 1847 in a decision which has been followed in every subsequent case to this day, and said definition expressly refers to the regulation of commerce as *police power.*

The License Cases, 46 U. S. 504, 583.

(2) The courts have expressly repudiated and rejected the *"Burleson Theory,"* that there are two distinct kinds of police power, one narrow and relative only to the public health, morals and safety, and the other sufficiently broad to include every attribute of government. The Supreme Court of the United States recognizes no such distinction, but specifically holds that the police powers of a state embrace regulations designed to promote the public convenience or general prosperity, as well as regulations designed to promote the public health, morals and safety.

C., B. & Q. Ry. Co. v. *Drainage Com.,* 200 U. S. 561, 592-593.

Lake Shore Ry. Co. v. *Ohio,* 173 U. S. 285, 296-297.

(3) Police power has been broadly defined in numerous other decisions. It is not subject to definite limitations. It embraces regulations designed to promote public convenience and general prosperity as well as the public safety and health. It is "the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government." "It extends to all great public needs. It may be put forth in aid of

what is sanctioned by usage, or by strong and preponderant public opinion held to be greatly and immediately necessary to public welfare, as the regulation of commerce of public utilities."

Sligh v. *Kirkwood,* 237 U. S. 52, 59.
Barbier v. *Connolly,* 113 U. S. 27.
Hammer v. *Dagenhart,* 247 U. S. 251, 274; 62 L. Ed., 1101, 1106.
Eubank v. *Richmond,* 226 U. S. 137, 142.
Noble State Bank v. *Haskell,* 219 U. S. 104.
Words and Phrases Judicially Defined, Vol. VI, topic *Police Power.*

d. The text books and encyclopædias also state that the regulation of rates of public utilities is an exercise of the police power to regulate and restrict monopolies and public business, enjoying special privileges, and to promote the public convenience and welfare.

Bierly on Police Power, p. 123.
Freund on Police Power, Secs. 372-398.
Stimson, Popular Lawmaking, 164.
Thompson on Corporations, 2nd Ed., Vol. III, Sec. 2950.
12 Corpus Juris, page 924, Sec. 432.
10 Corpus Juris, page 52, Sec. 37.

e. The Federal Government has no general police power to enact police regulations operative within the territorial limits of a state, and it cannot take this power from the states or attempt supervision over the regulations of the states established under this power.

6 Ruling Case Law, 190.

(1) Nor can Congress under the guise of an act to regulate commerce, prescribe police regulations such as child labor laws effective in the state, and thereby supersede state police regulations of peculiar local concern.

Hammer v. *Dagenhart*, 247 U. S. 251; 62 L. Ed., 1101.

(2) For the same reasons Congress cannot under the guise of its powers to make war, supersede the lawful police regulations of the states in respect to matters, such as local intrastate rates, when same have no conceivable relation to the carrying on of war, and Congress realizing this, expressly directed by the proviso that no construction be placed upon the resolution of July 16, 1918, which would in any way alter, amend, impair or repeal existing police regulations of the states.

(3) There being no general Federal Police Power, Congress in using the expression *police regulations* necessarily referred to police regulations as they existed in the several states and as defined by state laws and decisions.

36 Cyc. 1118 (f).

II. EVERY RULE OR PRINCIPLE GOVERNING THE CONSTRUCTION OF STATUTES REQUIRES THAT THE BROADEST POSSIBLE SCOPE BE GIVEN TO THE PROVISO CONTAINED IN THE RESOLUTION OF JULY 16, 1918, AND THAT UNDER NO CIRCUMSTANCES SHALL ANY CONSTRUCTION BE ADOPTED WHICH WOULD RESTRICT OR NARROW THE RESERVED POWERS OF THE STATES.

a. The manifest intention of Congress requires a broad construction of the proviso, for—

(1) Congress, in mobilizing the national resources for war manifestly could not and did not intend to interfere with inherent police powers of the states which had no conceivable relation to the war making power.

(2) The fact that the raising of intrastate telegraph rates was not a war measure essential to the winning of the war with Germany sufficiently appears from the fact that we carried the war through to a successful conclusion some five months before the Postmaster General ever attempted to supersede the existing intrastate rates.

(3) Congress, itself, eliminated all doubt as to the intended meaning of the proviso by adding the words of exception applicable to matters affecting the transmission of government messages or the issue of stocks and bonds. Regulation of intrastate rates has no conceivable reference to the transmission of government messages or the issue of securities, and hence the power of such regulations remains in the states where it has always been held, unaffected in any way by the Wire Resolution of July 16, 1918.

b. As the manifest purpose of the proviso is to save to the states that authority which the Supreme Court calls "the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government," the object of the proviso will be defeated by adopting a narrow construction of police power, and restricting the authority of the states over local rates and charges of public utilities.

c. The Congressional Resolution of July 16, 1918, is a broad grant of power to the President. The proviso contained therein is a restriction or limitation upon the power so granted and conferred, and constitutes a legislative construction of the act which excludes all possible ground for placing upon the resolution any interpretation which would authorize the President or his agents to modify existing police regulations or powers of the states relative to taxation.

36 Cyc. 1161-1168.
32 Cyc. 743.
Black on Interpretation of Laws, 1911 Ed., p. 430, Sec. 129.
Lewis' Sutherland Statutory Construction, 1904 Ed., Vol. 2, p. 670, Sec. 351.
City of Chicago v. *Phoenix Ins. Co.*, 126 Ill. 276, 280.
In re Day, 181 Ill. 73, 79.

d. Although a proviso should in general be strictly construed, consideration must be given to the apparent congressional intent to restrain or modify the enacting clause, and the proviso should be construed together with the enacting clause with

a view to giving the proper effect to each and carrying out the intention of Congress as manifested in the entire act. In general, a proviso must be so construed as to give to the statute an effect different from that which it would have had without the proviso.

Black on Interpretation of Laws, Sec. 131.
A. & E. Ency. of Law, Vol. 26, page 681.
Quackenbush v. *United States*, 33 Court of Claims, 355; 177 U. S. 20.

e. A recognized effect and operation of a proviso is to deny or prohibit, and hence when connected with a delegation of authority, it is tantamount to a command not to exercise the authority.

State v. *Orleans Levee District Commissioners*, 109 La. 403, 434; 33 Southern 385.
Austin v. *United States*, 155 U. S. 417, 431.

f. In all cases the general intent expressed in the enacting clause will be controlled by the broad intent subsequently expressed in the proviso.

Lewis' Sutherland Statutory Construction, 1904 Ed., Vol. 2, page 671.

g. The general rule that a proviso is to be strictly construed does not apply to cases where the statute itself is subject to strict construction. In all such cases, for example: in penal statutes or statutes in derogation of common law, the statute being strictly construed, the proviso upon the same principle must be broadly construed.

26 A. & E. Ency. of Law, 2nd Ed., page 680.

(1) Among the examples of such statutes may be

cited acts which grant power to deprive persons of the ownership of property without their consent, as in *Trumpler* v. *Bomerly*, 39 Cal. 490; *Young* v. *McKenzie*, 3 Ga. 31; *Campbell* v. *Youngson*, 80 Neb. 322; or which impose restrictions upon the control, management and use of private property, as in *Omaha Savings Bank* v. *Rosewater*, 1 Neb. 723; *Gray* v. *Stewart*, 70 *Kan.* 429, 78 Pac. 852; *Nance* v. *Southern Ry. Co.*, 149 N. C. 366; or which restrain the occupation of any trade or the conduct of any business, as in *Commonwealth* v. *Beck*, 187 Mass. 15; *in re* Jacobs, 98 N. Y. 98.

(2) Upon the same principle a statute or resolution whereby special powers for the accomplishment of a particular purpose are vested in an individual must be strictly construed in order that such powers may not be exercised for any collateral purpose.

26 A. & E. Ency. of Law, 664.

(3) In the case of the congressional resolution of July 16, 1918, the undoubted intent of the proviso is to reserve power in the states which, in the absence of such proviso, might be construed as having been delegated by the enacting clause to the President. It is a familiar rule of construction in all Federal questions arising under the Constitution of the United States that all delegations of power to the Federal Government are to be strictly construed and all reservations of power to the states broadly construed, and that all powers not expressly or by necessary implication conferred upon the Federal Government are reserved in the states. Upon this rule of construction effect must be given to the clearly manifested intention of Congress to reserve to the states their lawful police regulations.

III. ALTHOUGH THE RESOLUTION OF JULY 16, 1918, WAS ADOPTED IN A TIME OF NATIONAL EMERGENCY AND PERIL IN THE EXERCISE OF THE VAST UNDEFINED POWERS OF CONGRESS UNDER THE WAR CLAUSE OF THE CONSTITUTION, THE EXTENT OF THE POWERS CONFERRED REMAINS A JUDICIAL QUESTION TO BE DECIDED BY THE COURTS OF THE LAND.

In interpreting the provisions of the somewhat analogous acts of Congress by virtue of which the railroads passed under the control of the President, the United States District Court for the Eastern District of South Carolina uses this significant language, in its opinion handed down November 30, 1918:

> "Under this statute the President could authorize the Secretary of War only to take possession of such property as he himself is authorized to take possession of under the statute. The extent of his powers and the definition of what property he was authorized to take possession of under the statute would be necessarily a judicial question. All acts done and all property taken possession of within the adjudicated extent of the powers allowed might be a ministerial question, *but as to the extent of those powers and whether the powers were given must always, under the Constitution of the United States, remain a judicial question and one to be decided by the courts of the land.*"
>
> *United States Railroad Administration* v. *Burch*, 254 Fed. 140, 142.

IV. ASSUMING THAT CONGRESS, AS A WAR MEASURE, MIGHT HAVE ENACTED APPROPRIATE LEGISLATION, WIPING OUT OF EXISTENCE FOR THE PERIOD OF THE WAR, ALL STATE CONTROL OVER INTRASTATE RATES, THE POWER TO FIX RATES WHICH IS LEGISLATIVE IN ITS NATURE, COULD NOT HAVE BEEN LEGALLY CONFERRED UPON THE PRESIDENT OR ANY EXECUTIVE OFFICER.

Milwaukee Electric R. & L. Co. v. *Railroad Commission,* 238 U. S. 174, 180.

Field v. *Clark,* 143 U. S. 649, 692.

Therefore, even if the Wire Resolution was intended by Congress to confer authority upon the President to regulate intrastate rates, it did not accomplish such purpose in a constitutional manner and hence did not accomplish it at all.

ARGUMENT.

In this proceeding, both the plaintiff and defendants have sought equitable relief to protect them in the exercise of powers and authority which they claim to possess under existing Federal and State Laws. There can, therefore, be no question as to the jurisdiction of the court over the parties hereto, and the issue is narrowed to an interpretation of the powers of the President under the Wire Resolution of July 16, 1918.

THE AUTHORITY OF PLAINTIFF AND DEFENDANTS TO MAINTAIN THIS PROCEEDING IS NOT OPEN TO QUESTION.

Defendants do not question the right and authority of the Postmaster General to commence this action in equity against state officials and to secure an injunction, if his interpretation of the extent of his authority is correct, restraining their interference with powers which he claims to enjoy and exercise under the Constitution and laws of the United States. We assume, on the other hand, that the plaintiff will not seriously contend that defendants are without power and authority to maintain a counterclaim against the Postmaster General, and to secure an injunction restraining him from illegal and unauthorized acts, if, as defendants claim, the Congress did not confer, and never intended to confer, upon the President the power and authority to supersede lawful state rates established for intrastate telegraph service.

The issue therefore is clear, and goes directly to the merits of this controversy, and this court must determine whether Congress, by its resolution, intended to wipe out and supersede the reserved powers of the states to establish reasonable intrastate rates for telegraph service, or leave those powers unchanged and unhampered except in so far as they affect the transmission of Government messages or the issue of stocks and bonds by the corporate owners of telegraph properties.

THE QUESTION IS NOT AS TO WHAT ARE THE WAR POWERS OF CONGRESS, BUT AS TO WHAT POWERS CONGRESS ACTUALLY DID CONFER UPON THE PRESIDENT BY THE WIRE RESOLUTION OF JULY 16, 1918.

In this connection we recognize the claim that the war powers of Congress are vast and practically unrestricted. They are the highest expression of the sovereign power and include all that may be necessary to protect the life and existence of the nation. The powers of Congress under the war clauses of the Constitution are in fact so vast and unlimited that no court has undertaken to restrict or define them, and in so far as we are advised, no case has ever been decided in which any court has undertaken to say what Congress may do or may not do by virtue of its power to make war. We readily concede that Congress by virtue of this power and as a war necessity might have seized the telegraph and telephone lines of the country and devoted them exclusively to Government business and have done anything and all things necessary to expedite and

assist in the work of carrying on the war and bringing it to a successful conclusion. If Congress had undertaken to exercise all of its vast powers in the premises it could have possibly regulated rates, both intrastate and interstate, in so far as rate regulation might have appeared necessary or advisable, either for the purpose of raising additional revenues or reducing (to a minimum) unessential use of the properties. We concede that if Congress had acted under such circumstances, exercising all of the authority which it might have used, without provisos, or exceptions, or limitations, and expressly superseding as a war emergency all intrastate rates, no state could be heard to complain that its laws were violated or its police regulations set aside and held for naught.

In the present case we are concerned, however, not with any question as to what powers Congress might have exercised or what things Congress might have done, but as to what power and authority Congress actually did confer upon the President by the joint resolution of July 16, 1918, and as to what powers the Postmaster General acquired by virtue of the Presidential proclamation of July 22, 1918. Counsel for plaintiff will doubtless agree that the plaintiff in this cause must trace all of the power and authority which he exercises in connection with the Government control and operation of telegraph and telephone properties back to said joint resolution of July 16, 1918. If the rights which plaintiff claims are clearly embraced within the powers delegated by Congress through such resolution, then he exercises the same under authority of an act of Congress,

and this court cannot undertake to restrain or impede him, while if such threatened violations of state laws are not embraced within the powers which Congress by such resolution delegated to the President, then the Postmaster General, in exercising the same, steps outside of his office and beyond the scope of his official duties, and is amenable to the injunctive process of a court of equity to restrain his unauthorized and illegal acts.

The foregoing conclusion necessarily follows from the fact that the President himself is without Constitutional power or authority to seize and confiscate private property outside of the actual theatre of hostilities, except in so far as he has been vested with delegated authority by the Congressional Resolution referred to. The Constitutional power of the President to conduct war is, in fact, limited in its territorial scope to an immediate area of hostilities and corresponds to the executive powers of a commander-in-chief of a military force. He may seize and utilize enemies' property and impose the stern provisions of military law upon conquered or invaded territory, but he cannot, in a portion of the United States where the hostile forces of the enemy have not penetrated, supersede the ordinary processes of the courts, or suspend the Constitutional rights of citizens to the protection of either persons or property. This court, in the leading case wherein such extra-constitutional war-time powers of the President were asserted, disposed of such claims in the following significant language:

> "The Constitution of the United States is a law for rulers and people, equally, in war and

in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of Government."

Ex parte Milligan, 71 U. S. 2, 120-121.

THE WIRE RESOLUTION OF CONGRESS EXPRESSLY RESERVED TO THE STATES THEIR LAWFUL POLICE REGULATIONS.

The issues raised, therefore, necessitate primarily an interpretation of the joint resolution of July 16, 1918. We will consider the same in three parts. First, the enacting clause; second, the proviso; and, third, the exception to the proviso. The enacting clause is as follows:

"That the President during the continuance of the present war is authorized and empowered whenever he shall deem it necessary for the national security or defense to supervise or to take possession and assume control of any telegraph, telephone, marine cable or radio system or systems, or any part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war."

The proviso is as follows:

"Provided further that nothing in this act shall be construed to amend, repeal, impair or affect existing laws or powers of the states in relation to taxation or the lawful police regulations of the several states."

To this proviso there is added this exception:

"Except wherein such laws, powers or regulations may affect the transmission of Government communications or the issue of stocks and bonds by such system or systems."

Congress, in our opinion, could have used no stronger, more specific language to indicate its express direction that the rate making power of the states be not disturbed during the period of Federal control. The manifest intention of Congress was, in substance, to authorize the President to assume control of systems of communication only so far as might be necessary to secure the prompt transmission of Government messages, even to the extent of excluding private communication where that should be necessary, and to provide for a more effective censorship to safeguard against communications between the enemies of our country. The resolution, in substance, states that nothing contained therein shall be construed to amend, repeal, impair or affect existing police regulations of the state except wherein such regulations may affect the transmission of Government communications or the issue of stocks and bonds by the corporate owners of the telegraph and telephone properties. This exception to the proviso clearly shows the Congressional intent, and it is our understanding that plaintiff does not claim that the reasonable rates which the State of Illinois has heretofore prescribed for the transmission of telegraph messages do, in any sense, affect the transmission of Government communications or the issue of stocks and bonds. It is claimed, however, that the expression "Police Regulations," as used in this act, does not include the regulation of reasonable rates to be charged and collected by the telegraph companies.

THERE IS NO AUTHORITY FOR THE BURLESON THEORY THAT POLICE POWER AND POLICE REGULATIONS HAVE TWO DISTINCT AND WIDELY DIFFERENT MEANINGS, BUT THE EXPRESSIONS, "POLICE POWER" AND "POLICE REGULATIONS," HOWEVER USED, INCLUDE THE POWER TO REGULATE THE RATES OF PUBLIC UTILITIES.

In urging this interpretation, it is claimed by the Postmaster General that, while Police Powers and Police Regulations are sometimes used interchangeably, these expressions have, in fact, two wholly different and well defined meanings, that is to say, a strict and narrow interpretation relative to the protection of the public health, morals and safety, and a broad and general sense in which the term "Police Power" loses its significance and becomes synonymous with the powers of Government itself.

Is there any judicial authority for such an interpretation? It is true that the scope of the police power is constantly broadening as the state faces the increasing problems and complications of modern industrial life. Many laws are now considered reasonable police regulations which were once considered unconstitutional and beyond the scope of the police power, but from the day of the leading case of *Munn* v. *Illinois*, which went from the courts of this state to the Supreme Court of the United States to become an enduring landmark of the law, it has never been doubted that the police powers of the states embrace regulations designed to promote the public convenience, welfare and general prosperity, as well as the public health, morals and

safety, and specifically that the regulation of intrastate rates to be charged and collected by public utilities is a legitimate exercise of said police power.

We shall not refer again to all of the authorities which have been cited, but desire to point out that the Supreme Court of the United States has specifically repudiated and rejected the *"Burleson Theory,"* which would divide police power into two different classes, and has conclusively held that the police power which is exercised to promote the public convenience and welfare and the general prosperity of the community, must be tested by the same rules and depends upon the same foundations as that police power which purports to relate to the public health, morals and safety.

In *Chicago, Burlington & Quincy Ry. Co.* v. *Drainage Commissioners,* 200 U. S., at pages 592-593, the court disposes of this argument in the following language:

> "The learned counsel for the railway company seem to think that the adjudications relating to the police power of the state, to protect the public health, the public morals and the public safety are not applicable, in principle, to cases where the police power is exerted for the general well being of the community apart from any question of the public health, the public morals or the public safety. * * * We cannot assent to the view expressed by counsel. We hold that the police power of a state embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety. *Lake Shore & Michigan Southern Ry.* v. *Ohio,* 173 U. S. 285, 292; *Gilman* v. *Philadelphia,* 3 Wall. 713, 729; *Pound* v. *Turck,* 95 U. S.

459, 464; *Railroad Co.* v. *Husen*, 95 U. S. 470. And the validity of a police regulation, whether established directly by the state or by some public body acting under its sanction, must depend upon the circumstances of each case and the character of the regulation, whether arbitrary or reasonable and whether really designed to accomplish a legitimate public purpose. Private property cannot be taken without compensation for public use under a police regulation relating strictly to the public health, the public morals or the public safety, any more than under a police regulation having no relation to such matters, but only to the general welfare. The foundations upon which the power rests are in every case the same."

THE COURTS CONSTANTLY REFER TO THE RATE-MAKING POWER AS POLICE POWER AND TO RATE REGULATIONS AS POLICE REGULATIONS.

Moreover, the courts have repeatedly and consistently referred to the rate-making power as *police power* and to rate regulations as *police regulations*. Many of the old English cases established this principle with respect to the regulation of rates charged by ferries, hackmen and common carriers before the days when telegraph companies and railroads were known, but the first case in which the police power of the state over the rates charged by public utilities was definitely established by the highest court in the United States was *Munn* v. *Illinois*, 94 U. S. 113, decided by the Supreme Court of the United States in 1876. At page 125 the court refers to the police powers as nothing more or less than the powers of the Government inherent in every sovereignty; that is to say, the power to govern men and things, and states:

> "Under these powers the Government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, inn-keepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold."

In one of the recent cases in which this subject has been discussed, the Supreme Court of Oregon expressed the same principle as follows:

> "Power to govern men and things is inherent in government, and when an owner devotes his property to a use in which the public has an interest, he must submit to be regulated and controlled by the public for the common good (citing authorities). The right to regulate the rates to be charged by a public utility inheres in the power of government. The regulation of rates for the purpose of promoting the health, comfort, safety and welfare of society is an exercise of the police power, and is therefore an attribute of sovereignty."
>
> *Woodburn* v. *Public Service Commission*, Ann. Cas. 1917E, 996, 998; 82 Ore. 114; 161 Pac. 391.

After reviewing all of the rate regulation cases from *Munn* v. *Illinois* to the present day, it is stated in *Home Telephone Co.* v. *Los Angeles*, 155 Fed. 554, at page 570:

> "From the foregoing excerpts it is manifest that the Supreme Court classifies the power to

regulate rates as governmental and falling within the police powers of the states."

In the *Arkansas Rate Cases*, 187 Fed. 290, at page 297, the court again affirms this doctrine, using this conclusive and significant language:

> "The right of every sovereign state to regulate public service corporations and the rates to be charged by them, subject to the provisions of the Fourteenth Amendment prohibiting deprivation of one's property without due process of law, and other provisions of the national constitution, rests upon the police powers which 'are nothing more or less than the powers of government inherent in every sovereignty.'" (Citing numerous authorities.)

And this court, in the recent case of *Union Dry Goods Co.* v. *Georgia Public Service Corporation*, decided March 24, 1919, reported on page 116 of the United States Supreme Court Advance Opinion, used the following significant language, showing conclusively that rate regulation by a state is an exercise of police power:

> "The presumption of law is in favor of the validity of the order, and the plaintiff in error did not deny, as it could not successfully, that capital invested in an electric light and power plant to supply electricity to the inhabitants of a city is devoted to a use in which the public has an interest which justifies rate regulation by a state *in the exercise of its police power. Munn* v. *Illinois*, 94 U. S. 113; *Budd* v. *New York*, 143 U. S. 517; *German Alliance Ins. Co.* v. *Lewis, Superintendent of Insurance of the State of Kansas*, 233 U. S. 289, 407." (Italics ours.)

Necessarily, Congress in using the expression

"police regulations" in the resolution of July 16, 1918, used the expression in its commonly accepted meaning as defined by the courts in the authorities which have been cited and referred to; and Congress in excepting from the grant of power to the President the existing police regulations of the states, clearly had reference to such police regulations as were then upon the statute books of the several states, including the Public Utilities Commission Law of Illinois adopted by the Legislature in 1913. This act, which the Supreme Court of Illinois has held constitutional and valid, is a comprehensive measure for the regulation of public utilities, and the court in sustaining it specifically refers to it as an exercise of the police power in *City of Chicago* v. *O'Connell*, 278 Ill. 591, at page 603:

> "The regulation of public utilities is one phase of the exercise of the police power of the state."

At page 607 the court further states, reaffirming its former decisions:

> "It is true that a municipality cannot contract away the right to exercise the police power to secure and protect the morals, safety, health, order, comfort or welfare of the public, nor limit or restrain by any agreement, the full exercise of that power. We have accordingly held that a city cannot contract away its right under the police power to fix reasonable rates to be charged by a public utility furnishing water to the city and its inhabitants."

The Supreme Court of Illinois, it clearly appears, makes no distinction between the police power which is exercised to promote the public health, morals and safety, and the police power which is

attributable to the public welfare, order and prosperity, but considers all police power of every kind, character or degree, to be incapable of alienation, and a necessary attribute of sovereignty, which the state can neither surrender nor contract away.

The meaning of police regulations is therefore well settled by the decisions of both the Supreme Court of Illinois and the Supreme Court of the United States, and there remains no debatable field for interpretation or construction. The decisions referred to are binding upon this court and no reason has been urged or suggested which would justify the adoption of a different meaning.

EVERY RULE OF CONSTRUCTION REQUIRES THAT BROAD EFFECT BE GIVEN TO THE LANGUAGE OF THE PROVISO.

If, however, the court should be inclined to give credence to the theory that the police power is sometimes used in two widely different meanings, what possible reason or argument can be advanced for holding that Congress in the resolution of July 16, 1918, used the expression in a strict or narrow sense rather than in the common and ordinary significance as defined by our courts and written into our system of jurisprudence? Obviously, under the fundamental rule of construction, all of the provisions of the resolution, including the enacting clause, the proviso and the exception, must be construed together. Effect is to be given, in so far as possible, to all, and we assume that the court will, in its interpretation, place no limitation upon the broad powers conferred upon the President which could

or would necessarily handicap or embarrass the Government in the conduct of war, if the country were now engaged in war, or delay or hinder the transmission of Government messages. We further assume, however, that the court will take judicial notice of the fact that the actual hostilities between the United States and the German Government were terminated by the armistice of November 11, 1918, and that the acts which the Postmaster General now seeks to do, in violation of state laws and lawful police regulations of the state, do not affect in any degree whatsoever the transmission of Government messages and have no possible relation to the conduct of the war, but will at most place upon the users of long distance telephone service, already burdened by the high cost of all necessities of life and business, a new and additional burden which has not been justified by any hearing before the proper state officials entrusted with the responsibility of determining just and reasonable rates to be charged by public utilities, which, as plaintiff frankly admits, is not based upon any survey or valuation of the property which is devoted to the public use and which, as far as we are advised, are not based upon the cost of furnishing such service or upon the necessities of the Government for additional revenues and funds, but solely upon the order and direction of the Postmaster General.

THE POWER TO OPERATE AND CONTROL DOES NOT OF NECESSITY INCLUDE THE POWER TO FIX RATES.

It has been furthermore suggested by the Postmaster General that Congress could not possibly have intended to authorize the President to control and operate the telegraph systems of the United States and to pay to the owners just compensation therefor without also conferring upon the President the rate-making power, in order that he might be authorized, from time to time, as necessity arose, to prescribe new rates and tariffs to the end that the properties might earn sufficient revenue to pay just rental to their owners. This argument loses sight of the real purpose for which Congress seized the telegraph and telephone property. There is no more authority or reason for holding that when Congress took possession of telegraph companies for war making purposes they must be made to derive sufficient revenues from the public to pay the compensation therefor than there would be for applying the same principle to the seizure or control of an automobile factory, a ship-yard or any other established business. In each case, the Government takes the property in order to devote its product and use in so far as necessary to war purposes, and if there is a deficit occasioned thereby, the Government, out of the public revenue, and not the ordinary users of the property, should foot the bill.

Furthermore, it is not conceivable that, if the established intrastate rates for telegraph service should prove insufficient or inadequate to meet the necessary expenses of operating the companies dur-

ing war conditions, the state authorities having charge of the regulation of such rates would, upon application, deny to the Postmaster General the authority to permit necessary increases. The Illinois Public Utilities Commission Law and the similar laws of other states provide that the rates to be charged by public utilities shall be just, reasonable and adequate. They provide a proceeding by which public utilities may apply for necessary increases, and it cannot be doubted that if the Postmaster General, instead of acting in defiance of state laws and state police regulations, had applied to the state authorities for permission to increase telegraph rates, and submitted the necessary information to show that such increase was justified and necessary, the increased rates would have been authorized without litigation and without delay.

That such procedure would not have been impracticable nor unduly burdensome, is shown through the one practical application which it has had. We refer to the increase in express rates, effective July 1, 1918, which was ordered on intrastate traffic by the Interstate Commerce Commission. Application for a like increase was made by telegraph to the various state commissions and the increase was promptly granted, as requested, by all except five states, and these states have since granted such increases subject to certain modifications necessary to meet local conditions.

The argument that the various states might refuse the requested increases and thus create confusion and discrimination loses sight of the fact that

the standard of rates in various states, and also in interstate commerce, is the same, that is to say, just and reasonable rates. Such being the fact, it cannot be assumed that the State Commission will fail to perform their duty and authorize any just and reasonable rates which the Postmaster General may desire to make effective.

Moreover, the rates to be charged for public utility service in different communities, among varying conditions, and prices for material and labor, are peculiarly a matter of local concern, which should be left to the regulation of local authority. Even if the Burleson construction of the proviso be accepted, Congress still left it to the local authorities to determine in what way the telegraph properties should be operated under regulations necessary to protect the public health, the public morals and the public safety. In the different states, there are widely divergent laws relative to the hours which employes may labor, the speed at which telegraph messengers may travel in delivering messages, and the protection which telegraph wires must receive in the way of insulation and covering, and in all these respects, it is conceded that Congress left the Government operated telegraph lines subject to such reasonable regulations as the various states might impose. No additional reason, not equally applicable to such police regulations relative to the public health, morals and safety, have been suggested why Congress did not also intend to continue in full force and effect the police regulations of the state which have to do with general prosperity and the public welfare. There is no Federal police

power, in the general sense in which the term "Police Power" is used, and Congress, in using the words "Police Regulations," therefore, of necessity, referred to such varying police regulations as the several states might see fit to impose, and which are peculiarly a matter of local concern, and therefore properly left to the enforcement of state authorities. If such varying laws of different states are a cause of embarrassment to the Postmaster General, the fault is attributable to Congress and not to him, and cannot justify a total disregard of state laws and the limitations of the act under which the government controls and operates the wires.

IN SO FAR AS THE WIRE RESOLUTION SUSPENDS OR NULLIFIES RESERVED POWERS OF STATES, IT MUST BE STRICTLY CONSTRUED.

Furthermore, it is another accepted principle, that under our dual system of government, Federal and State, the powers not delegated, expressly, or by necessary implication, to the United States, are reserved by the states. The proviso was not intended to confer upon the states the right to exercise police power, because such power is inherent in them, and not in Congress, but it was intended to eliminate any possible construction which would tend to impair or affect the lawful police regulations of the states, state powers which have never been surrendered to the Federal Government, but remain in the states as at the time of the adoption of the Constitution.

South Carolina v. *United States,* 199 U. S. 437.

Keller v. *United States,* 213 U. S. 138.

It necessarily follows, therefore, that when Congress enacts a measure in derogation of states' rights, all questions regarding the interpretation of such measure must be resolved in favor of the states and against the National Government, and the state authority will be superseded, if at all, only to the extent to which Congress has clearly and exclusively occupied the field by a Federal measure enacted pursuant to its Constitutional power. This rule of construction requires that the Wire Resolution be interpreted in such a manner as to reserve to the states all lawful rights which do not interfere with the war-making power of Congress, that is to say, the transmission of Government messages for war purposes, and clearly preserves to the states all of those powers and rights which have commonly been designated *police regulations.*

For the reasons stated, it is our contention that the proviso should not be narrowly construed; that Congress in fact never intended it to be narrowly construed. By a strange coincidence, just as Congress by the insertion of the proviso clearly manifested its intention not to include in the delegation of power to the President any authority to set aside and nullify existing state police regulations, so Congress, by the addition of the exception to the proviso, clearly showed that it used the expression "*police regulations*" in the broadest possible sense, and not in any narrow or limited meaning.

THE EXCEPTION TO THE PROVISO ELIMINATING THE REGULATION OF SECURITY ISSUES FROM THE POWERS RESERVED TO THE STATES CLEARLY SHOWS THAT CONGRESS USED THE WORDS "POLICE REGULATIONS" IN THEIR MOST COMPREHENSIVE SIGNIFICANCE.

As will appear from the authorities cited, the expression "*police regulations*" has been construed by the courts to include all things which the state necessarily does to promote the public health, morals, safety, welfare and convenience, including the power to regulate public utilities, fix their reasonable rates and charges, and establish their reasonable standards of service, and the Illinois Public Utilities Commission Law is a general police regulation designed to promulgate a comprehensive system for the regulation of public utilities.

Among the powers which the Public Utilities Commission of Illinois is by said statute authorized to exercise is the regulation of the issue of stocks, bonds and other securities by public utilities doing business in this state. Similar regulations are found in the public utilities laws of various other states. The Illinois Supreme Court has not had occasion to pass upon the constitutionality of such regulations, but in other states it has been held that the regulation of the issues of securities by public utilities is not primarily police power, but can be exercised by the state only by virtue of the power of the sovereign, the creator, over the corporations to which it gives life and existence. The Congress, by the exception engrafted on the proviso to the Wire Resolution, clearly showed, in our opinion, that in using the

expression *"police regulations"* it referred to police power of every kind, character and degree, including measures relative to the public welfare and prosperity, as well as measures designed to promote the public health, morals and safety, and then because it was thought possible that this broad police power might even be construed to include the regulation of security issues, Congress added the exception to the proviso, in order that this specific power might not be reserved to the states and that all doubt as to the congressional intent might be removed.

If, as plaintiff contends, Congress had used the expression *"police regulations"* in any narrow significance, having to do merely with local and municipal ordinances, such as the police commonly enforce, in respect to the stringing of telegraph wires and their proper insulation and protection, then it would clearly have been unnecessary for Congress to add the express language which removed from the operation of the proviso the regulation of the issue of securities. The language used makes clear the intention of Congress, and it is our opinion that, giving effect to the provisions of the resolution as a whole, Congress delegated to the President the vast power to take physical possession of the telephone and telegraph systems and property, wherever situated in the United States, and to control and operate the same, and to do all other things which might be necessary to assist in bringing to a successful consummation the war with the German government, but that Congress expressly ex-

cepted from the power so granted, and in effect ordered the President not to interfere with the powers of the states in reference to taxation and such lawful police regulations as the control of intrastate rates, and then, in order that the President, in spite of this proviso, might not be embarrassed in refunding the obligations of said companies because of conflicting state laws, there was added the additional exception in reference to the regulation of security issues.

THE RAISING OF TELEGRAPH RATES IS NOT A LEGITIMATE WAR MEASURE, AND THE STATE OF ILLINOIS IS NOT ESTOPPED TO ASSERT ITS CONSTITUTIONAL RIGHTS.

Considering these provisions of the resolution as a whole, we find no apparent inconsistency, and we believe we place upon the act and upon the intention of Congress, no strained construction in holding that the State of Illinois retains all of its police power to make and enforce lawful police regulations in respect to the operation of the telegraph lines of these Defendants. The Postmaster General operated said property from the 31st day of July, 1918, throughout the remaining period of the war and up to the 1st of April, 1919, nearly five months after actual hostilities had ceased, without discovering any necessity for overriding state laws or making changes or increases in the rates for intrastate telegraph service, which the state, by its properly constituted authorities, had established and approved. No reason has been suggested or shown why the Postmaster General cannot and

should not now be compelled to continue to operate said property in full compliance with the laws of this state. During the actual continuance of a state of hostilities with Germany the various states, as a matter of patriotism, acquiesced in the promulgation of many rules and regulations by the Director General of Railroads in respect to the operation of the railroads of this country which seemed to them unjustified and unauthorized by law. The State of Illinois, for this reason, acquiesced in the establishment of a rate of three cents per mile for intrastate travel upon the railroads of this state, in violation of the existing Illinois statute and without any authority from its Public Utilities Commission. With the ending of the war, however, all reason for the surrender of any right of the state to exercise its control over intrastate rates has been terminated, and we, therefore, respectfully insist that under the Constitution and laws of the United States, the State of Illinois, through its Public Utilities Commission, has the sole right and authority to establish and determine the rates to be charged by the Postmaster General for the transmission of telegraph messages between points lying wholly within the State of Illinois.

PLAINTIFF IS NOT IMMUNE FROM SUIT BECAUSE HE CLAIMED TO ACT AS AGENT OF THE UNITED STATES.

These being the rights of the State of Illinois, has any valid reason been urged why these rights should not be vindicated and upheld by the injunction of this honorable court? Plaintiff claims he is

immune from the process of this court because he acts solely as the agent of the United States Government, and because the real party in interest is the United States, which cannot be sued without its consent.

To this contention we answer that while the courts will not interpose their judgment against the decision of a United States officer in respect to any matter within the scope of his authority and wherein he is given discretion to act, a court of equity will grant relief against an officer, *even against the Postmaster General, himself,* in a case where he has attempted to go outside of his authority and exercise jurisdiction not conferred upon him by statute.

The United States Supreme Court has in fact expressly held that the Postmaster General may be enjoined from refusing the use of the mails to a citizen in violation of federal law. The opinion discusses all of the questions which plaintiff has raised in this proceeding, and disposes of the same in the following language:

> "Conceding for the purpose of this case, that Congress has full and absolute jurisdiction over the mails, and that it may provide who may and who may not use them, and that its action is not subject to review by the courts, and also conceding the conclusive character of the determination by the Postmaster General of any material and relevant questions of fact arising in the administration of the statutes of Congress relating to his department, the question still remains as to the power of the court to grant relief where the Postmaster General has assumed and exercised jurisdiction in a case not covered by the statutes, and where he has ordered the detention of mail matter when the

statutes have not granted him power so to order. Has Congress entrusted the administration of these statutes wholly to the discretion of the Postmaster General, and to such an extent that his determination is conclusive upon all questions arising under those statutes, even though the evidence which is adduced before him is wholly uncontradicted, and shows beyond any room for dispute or doubt that the case in any view is beyond the statutes, and not covered or provided for by them?

That the conduct of the post office is a part of the administrative department of the Government is entirely true, but that does ont necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head or one of the subordinate officials of that department which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief."

School of Magnetic Healing v. *McAnnulty*, 187 U. S. 94, 107, 108.

THE PROCESS OF THE COURT IS NOT STAYED BECAUSE THE RELIEF SOUGHT WOULD DEPRIVE PLAINTIFF OF PROPERTY CLAIMED BY THE UNITED STATES.

Counsel for plaintiff will doubtless suggest that a court of equity will not interfere in this proceeding because the effect of the injunction would be to take from the United States property which it claims as its own. In advancing this argument, counsel wholly misconceives the nature of this proceeding, for we seek not to enjoin the United States from using its own property, but to prevent the telegraph

cepted from the power so granted, and in effect ordered the President not to interfere with the powers of the states in reference to taxation and such lawful police regulations as the control of intrastate rates, and then, in order that the President, in spite of this proviso, might not be embarrassed in refunding the obligations of said companies because of conflicting state laws, there was added the additional exception in reference to the regulation of security issues.

THE RAISING OF TELEGRAPH RATES IS NOT A LEGITIMATE WAR MEASURE, AND THE STATE OF ILLINOIS IS NOT ESTOPPED TO ASSERT ITS CONSTITUTIONAL RIGHTS.

Considering these provisions of the resolution as a whole, we find no apparent inconsistency, and we believe we place upon the act and upon the intention of Congress, no strained construction in holding that the State of Illinois retains all of its police power to make and enforce lawful police regulations in respect to the operation of the telegraph lines of these Defendants. The Postmaster General operated said property from the 31st day of July, 1918, throughout the remaining period of the war and up to the 1st of April, 1919, nearly five months after actual hostilities had ceased, without discovering any necessity for overriding state laws or making changes or increases in the rates for intrastate telegraph service, which the state, by its properly constituted authorities, had established and approved. No reason has been suggested or shown why the Postmaster General cannot and

should not now be compelled to continue to operate said property in full compliance with the laws of this state. During the actual continuance of a state of hostilities with Germany the various states, as a matter of patriotism, acquiesced in the promulgation of many rules and regulations by the Director General of Railroads in respect to the operation of the railroads of this country which seemed to them unjustified and unauthorized by law. The State of Illinois, for this reason, acquiesced in the establishment of a rate of three cents per mile for intrastate travel upon the railroads of this state, in violation of the existing Illinois statute and without any authority from its Public Utilities Commission. With the ending of the war, however, all reason for the surrender of any right of the state to exercise its control over intrastate rates has been terminated, and we, therefore, respectfully insist that under the Constitution and laws of the United States, the State of Illinois, through its Public Utilities Commission, has the sole right and authority to establish and determine the rates to be charged by the Postmaster General for the transmission of telegraph messages between points lying wholly within the State of Illinois.

PLAINTIFF IS NOT IMMUNE FROM SUIT BECAUSE HE CLAIMED TO ACT AS AGENT OF THE UNITED STATES.

These being the rights of the State of Illinois, has any valid reason been urged why these rights should not be vindicated and upheld by the injunction of this honorable court? Plaintiff claims he is

immune from the process of this court because he acts solely as the agent of the United States Government, and because the real party in interest is the United States, which cannot be sued without its consent.

To this contention we answer that while the courts will not interpose their judgment against the decision of a United States officer in respect to any matter within the scope of his authority and wherein he is given discretion to act, a court of equity will grant relief against an officer, *even against the Postmaster General, himself,* in a case where he has attempted to go outside of his authority and exercise jurisdiction not conferred upon him by statute.

The United States Supreme Court has in fact expressly held that the Postmaster General may be enjoined from refusing the use of the mails to a citizen in violation of federal law. The opinion discusses all of the questions which plaintiff has raised in this proceeding, and disposes of the same in the following language:

> "Conceding for the purpose of this case, that Congress has full and absolute jurisdiction over the mails, and that it may provide who may and who may not use them, and that its action is not subject to review by the courts, and also conceding the conclusive character of the determination by the Postmaster General of any material and relevant questions of fact arising in the administration of the statutes of Congress relating to his department, the question still remains as to the power of the court to grant relief where the Postmaster General has assumed and exercised jurisdiction in a case not covered by the statutes, and where he has ordered the detention of mail matter when the

statutes have not granted him power so to order. Has Congress entrusted the administration of these statutes wholly to the discretion of the Postmaster General, and to such an extent that his determination is conclusive upon all questions arising under those statutes, even though the evidence which is adduced before him is wholly uncontradicted, and shows beyond any room for dispute or doubt that the case in any view is beyond the statutes, and not covered or provided for by them?

That the conduct of the post office is a part of the administrative department of the Government is entirely true, but that does ont necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head or one of the subordinate officials of that department which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief."

School of Magnetic Healing v. *McAnnulty*, 187 U. S. 94, 107, 108.

THE PROCESS OF THE COURT IS NOT STAYED BECAUSE THE RELIEF SOUGHT WOULD DEPRIVE PLAINTIFF OF PROPERTY CLAIMED BY THE UNITED STATES.

Counsel for plaintiff will doubtless suggest that a court of equity will not interfere in this proceeding because the effect of the injunction would be to take from the United States property which it claims as its own. In advancing this argument, counsel wholly misconceives the nature of this proceeding, for we seek not to enjoin the United States from using its own property, but to prevent the telegraph

companies and their officers and employes from illegally charging, collecting and receiving money which belongs to the citizens of Illinois and not to the United States Government, and which, in our view of this case, Congress never intended that the telegraph companies should receive.

Even in cases where the officers and representatives of the United States are illegally in possession of land belonging to a citizen, and defend their possession as the possession of the United States pursuant to the order of the President, it has been held that the courts are not without authority to grant appropriate relief. This precise question arose in the case of *United States* v. *Lee,* 106 U. S. 196, a proceeding originally commenced by Lee in the Virginia state courts to recover possession of a portion of Arlington Cemetery, which was occupied by certain officers of the United States army. Defendants claimed authority to hold possession of said property as the agents of the federal government, and removed the proceedings to the United States courts, where a jury found that the land belonged to the plaintiff and that the title of the government was invalid. Subsequently the attorney general intervened on behalf of the United States, and took the case to the Supreme Court upon writ of error. We quote from the opinion at pages 215, 216, 219, 220 and 221:

> "This examination of the cases in this court establishes clearly this result: that the proposition that when an individual is sued in regard to property which he holds as officer or agent of the United States, his possession cannot be disturbed when that fact is brought to the at-

tention of the court, has been overruled and denied in every case where it has been necessary to decide it. * * *

What is that right as established by the verdict of the jury in this case? It is the right to the possession of the homestead of plaintiff. A right to recover that which has been taken from him by force and violence, and detained by the strong hand. This right being clearly established, we are told that the court can proceed no further, because it appears that certain military officers, acting under the orders of the President, have seized this estate, and converted one part of it into a military fort and another into a cemetery.

It is not pretended, as the case now stands, that the President had any lawful authority to do this, or that the legislative body could give him any such authority except upon payment of just compensation. The defense stands here solely upon the absolute immunity from judicial inquiry of every one who *asserts* authority from the executive branch of the government, however clear it may be made that the executive possessed no such power. Not only no such power is given, but it is absolutely prohibited, both to the executive and legislative, to deprive any one of life, liberty or property without due process of law, or to take private property without just compensation. * * *

No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.

It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

Courts of justice are established, not only to decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the government; and the docket of this court is crowded with controversies of the latter class.

Shall it be said, in the face of all this, and of the acknowledged right of the judiciary to decide in proper cases, statutes which have been passed by both branches of Congress and approved by the President to be unconstitutional, that the courts cannot give a remedy when the citizen has been deprived of his property by force, his estate seized and converted to the use of the government without lawful authority, without process of law, and without compensation, because the President has ordered it and his officers are in possession?

If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights.

It cannot be, then, that when, in a suit between two citizens for the ownership of real estate, one of them has established his right to the possession of the property according to all the forms of judicial procedure, and by the verdict of a jury and the judgment of the court, the wrongful possessor can say successfully to the court, Stop here, I hold by order of the President, and the progress of justice must be stayed. That, though the nature of the controversy is one peculiarly appropriate to the judicial function, though the United States is no party to the suit, though one of the three great branches of the government to which by the Constitution this duty has been assigned has declared its judgment after a fair trial, the unsuccessful party can interpose an absolute veto upon that judgment by the production of an order of the Secretary of War, which that officer

had no more authority to make than the humblest private citizen." (Italics ours.)

The foregoing decision has been repeatedly cited and followed in subsequent opinions of the Supreme Court, and it stands unimpeached, as conclusive authority for the proposition that *in this country no man is so far above the law that when his illegal actions are attacked in the courts he can assert absolute exemption from suit because he claims to act as the agent of the United States or the representative of the President.*

THIS IS NOT A SUIT AGAINST THE UNITED STATES.

Moreover, this is not a suit against the United States nor a proceeding *in rem* against property belonging to the United States. The controversy is not of a political nature nor does it extend to the Constitutional rights or authority of the President in so far as the President is concerned herein. It is by reason of the power delegated to him by Congress, and not by reason of the Constitutional powers vested in him by the Constitution. The question as to the extent of the power so delegated by Congress is not affected by the political office or standing of the persons to whom the power was delegated. As was said by Mr. Chief Justice Marshall, in *Marbury* v. *Madison,* 5 U. S. 137, 166-171:

"It is not by the office of the person to whom the writ is directed, but the nature of thing to be done that the propriety of judicial interference is to be determined."

Moreover, the President of the United States, un-

der authority vested in him by the Congressional Resolution, can only delegate to his agents and employes such authority as he himself is authorized to exercise. Referring to the powers of the President, under the act authorizing Federal control of the railroads, the United States District Court for the Eastern District of South Carolina, in an opinion handed down November 30, 1918, stated:

> "Under this statute, the president could authorize the Secretary of War only to take possession of such property as he himself is authorized to take possession of under the statute. The extent of his power, and the definition of what property he was authorized to take possession of under the statute, would be necessarily a judicial question. All acts done, and all property taken possession of, within the adjudicated extent of the powers allowed, might be a ministerial question, but as to the extent of those powers, and whether the powers were given, must always, under the Constitution of the United States, remain a judicial question, and one to be decided by the courts of the land."
>
> *United States Railroad Administration* v. *Burch,* 254 Fed. 140, at 142.

This action is not brought to interfere with the property of the telegraph companies or with the property of the United States Government. It is not brought to interfere with, or control the exercise of the judgment or discretion of any officer of the executive department of the Government as to those duties which the law requires him to perform and as to the matters which come within his jurisdiction. It is to enjoin such officer or agent from acting unlawfully, and as to matters concerning

which he is wholly without jurisdiction or authority under the Act of Congress, pursuant to which he purports to act.

In this proceeding, the plaintiff himself first invoked the jurisdiction and assistance of a court of equity to protect him in the exercise of his asserted power, and he cannot now he heard to state that the court is without jurisdiction over him to enjoin him from exceeding his authority, or to construe the act under which he operates and controls the telegraph companies.

THE DISTRICT COURT OF THE UNITED STATES HAD FULL AND COMPLETE JURISDICTION OVER BOTH THE SUBJECT MATTER OF THIS PROCEEDING AND THE PARTIES THERETO, AND HAD FULL AUTHORITY TO GRANT THE RELIEF PRAYED FOR BY DEFENDANTS.

There remains but one question for consideration. Did the people of the State of Illinois appeal to the proper tribunal for relief? In similar proceedings instituted by state authorities against telephone companies in the Federal Courts of Indiana, Florida, Nebraska and other states, the Postmaster General has contended that the Federal Courts were wholly without jurisdiction over the subject matter, because the state's right of action was bottomed upon the violation of state laws. This defense is not available to the Postmaster General in this proceeding because he himself submitted to the jurisdiction of the United States District Court and thereby opened the way for the defendants to seek equitable relief against him. In other similar proceedings in state courts, the Postmaster General

has furthermore contended that he is immune from suit, and that no matter to what extent he may have exceeded his delegated powers and infringed the reserved rights of states, there is no judicial tribunal authorized to enjoin him, and that he is responsible only to Congress in an impeachment proceeding.

With reference to these asserted claims of immunity from suit, the defendants herein take the position that the Constitution of the United States does not permit a great wrong and violation of state rights without affording a remedy. It cannot be that the millions of users of telegraph service in Illinois can be illegally compelled to pay thousands of dollars additional each day for telegraph charges, and that the law and courts are powerless to grant relief. It cannot be that there is no tribunal which can protect the State of Illinois in the exercise of its police power in these matters which concern so vitally the general welfare of all users of telegraph service in this state. Manifestly, there must be some tribunal which is authorized to grant relief to these defendants against the Postmaster General, and we respectfully submit that the United States District Court for the Northern District of Illinois had full and complete authority over the parties hereto and the subject matter involved, and full jurisdiction to enter the decree order permanently enjoining the plaintiff from charging unauthorized rates for intrastate telegraph service between points lying wholly within Illinois. In similar proceedings in the state courts of Indiana, Ohio, Minnesota, Michigan, Illinois and South Dakota, injunctions have been granted to the people, restraining the telegraph and

telephone companies and the agents and representatives of the Postmaster General, from the collection of unauthorized and illegal tolls and charges. The opinion of the Supreme Court of South Dakota, in the proceeding entitled, *State ex rel Payne* v. *Dakota Central Telephone Company,* 171 N. W. Rep. Advance Sheets, page 277, is now before this court for review, and furnishes a well considered statement of the position taken by the defendants in this proceeding. Upon the authority of this opinion, as well as upon the authority of the cases cited herein, we respectfully pray that the decree of the District Court for the Northern District of Illinois may be approved and affirmed by this honorable court, and that the plaintiff may be permanently enjoined and restrained from charging, collecting, demanding or receiving, for the transmission of messages by telegraph between points lying wholly with the State of Illinois, any rates other and different than such rates as may be approved by the Public Utilities Commission of Illinois, in compliance with the laws of said state.

Respectfully submitted,

EDWARD J. BRUNDAGE,
Attorney General,
Attorney for Appellees.

GEORGE T. BUCKINGHAM,
MATTHEW MILLS,
RAYMOND S. PRUITT,
Assistant Attorneys General,
Of Counsel.

BURLESON, POSTMASTER GENERAL, *v.* DEMPCY ET AL., CONSTITUTING THE PUBLIC UTILITIES COMMISSION OF ILLINOIS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 1006. Argued May 5, 6, 1919.—Decided June 2, 1919.

Decided on the authority of *Dakota Central Telephone Co.* v. *South Dakota*, *ante*, 163.
Reversed.

THE case is stated in the opinion.

Mr. Henry S. Robbins, with whom *The Solicitor General* was on the brief, for appellant:

A suit against the Postmaster General or his agents, which seeks to control him in the matter of telegraph charges is in legal effect a suit against the United States.

Under the joint resolution, pursuant to which the President operates the telephone and telegraph lines, the power to fix rates, both interstate and intrastate, is in the President. The States have no power to estalish intrastate rates. Otherwise construed, the act of Congress would be unconstitutional.

The power to conduct a war is divisible into the power to provide the man power and other resources, and the power to direct their use. Thus the Constitution gives Congress only powers "to lay and collect taxes . . . to . . . provide for the common defence," "to raise and support armies," "to provide and maintain a navy," "to make rules for the government and regulation of the land and naval forces," "to provide for calling forth the

militia to execute the laws of the Union," to "provide for organizing, arming, and disciplining the militia," and to pass all laws "necessary or proper" to enable the President to make war. The above power "to make rules for the government and regulation of the land and naval forces" does not include the power to direct their operation for the reason that this latter power, although contained in the Articles of Confederation, was omitted from the Constitution. Consistently with these powers, which are conferred upon Congress, the President is made commander-in-chief of the army and navy, and is vested with all power of an executive nature. Thus Congress is given the power to provide the resources for the conduct of a war, while the President is given power to direct the use of such resources. The purpose and effect of this joint resolution was to provide the President with certain resources for the successful prosecution of the war. This was clearly a legislative act and properly pertained to Congress. Having provided the President with these particular resources, the control and operation of the lines belong to the President, not merely under the terms of the joint resolution, but by reason of the fact that such control and operation involve the exercise of the power to conduct the war. Hence, the power to control and operate the telegraph lines, given into the possession of the President by the act of Congress, belong to the President under the Constitution, and not merely under the act of Congress. It follows that his control and operation cannot be made subordinate to the will of any State.

The rate-making power is not reserved to the States under the proviso which authorizes the States to enact lawful police regulations.

The correctness of this construction appears from the purpose and policy of the act in question.

A state law establishing intrastate telegraph rates,

even if enacted under the police power, is invalid, because a direct interference with the war powers of the Federal Government.

The history of the proviso in question discloses that Congress did not intend to reserve to the States the power to establish intrastate rates.

Mr. Raymond S. Pruitt, Assistant Attorney General of the State of Illinois, with whom *Mr. Edward J. Brundage*, Attorney General of the State of Illinois, and *Mr. George T. Buckingham* and *Mr. Matthew Mills*, Assistant Attorneys General of the State of Illinois, were on the brief, for appellees:

This suit will lie to enjoin the Postmaster General. The Postmaster General is the moving party in this litigation, and by applying to the District Court for a construction of his powers and the powers of defendants over intrastate telegraph rates, he submitted himself to the jurisdiction and protection of the court, and waived his asserted immunity from suit.

Congress by the proviso in the Joint Resolution of July 16, 1918, in effect specifically ordered that the powers thereby conferred upon the President shall not be construed to amend, repeal, impair or affect the existing police regulations of the States relative to intrastate commerce, including the fixing of reasonable intrastate rates to be charged and collected by telegraph companies.

Assuming that Congress, as a war measure, might have enacted appropriate legislation, wiping out of existence for the period of the war all state control over intrastate rates, the power to fix rates, which is legislative in its nature, could not have been legally conferred upon the President or any executive officer. *Milwaukee Electric R. & L. Co.* v. *Railroad Commission*, 238 U. S. 174, 180; *Field* v. *Clark*, 143 U. S. 649, 692.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

In a suit commenced by the Postmaster General, the members of the Public Utilities Commission of Illinois and the Attorney General of that State filed a cross-bill to enjoin the Postmaster General from enforcing telgraph rates which he had directed to be charged for services rendered over lines which were in the possession, under the control, and being operated by the United States under authority of the resolution of Congress and the proclamation of the President considered in *Dakota Central Telephone Co.* v. *South Dakota*, this day announced, *ante*, 163.

The theory of the cross-bill was that the United States in operating the lines was governed as to intrastate rates by state authority and could not lawfully exact for such services rendered any charges but those which the State sanctioned. The court below upheld this view and therefore permanently enjoined the Postmaster General from charging any other than the state rates for the intrastate business. The case is before us on appeal from the decree to that effect.

As there is no difference in legal principle as to the question of power between the *Dakota Central Telephone Case* and this, it follows that the decision in that case is conclusive here and makes certain the error committed below. In this case, therefore, as in that, as a decree of reversal will dispose of every issue in the case, it follows that the decree below must be reversed and the case remanded for further proceedings not inconsistent with this opinion.

And it is so ordered.

MR. JUSTICE BRANDEIS dissents.